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FOREWORD

The *ad valorem* tax upon real estate has long been a principal source of revenue to the states and to the local governmental units within them. Severe economic depression has strained this tax almost to the breaking point. On the one hand, delinquencies have mounted in many communities to so high a proportion of the tax levy as to jeopardize the payment of governmental obligations and the maintenance of essential services which have been dependent upon this tax. On the other hand, accentuation of the tax burden by the depression has led to the organization of important pressure groups working for a variety of measures which may be subsumed under the slogan, "relief for real estate." These proposals are numerous and their ramifications are myriad. They present such grave questions of economic and social policy that in this symposium, which is focused upon the collection of the real property tax, it has been impossible to develop, except to a very limited extent, their evident relationship to the subject under consideration.

In this complex of interrelated problems, tax collection procedure may seem of limited significance. Admittedly it is not basic. Yet evidence is not lacking that a considerable share of blame for the present crisis may be laid at the door of the clumsy, inefficient, and often badly administered systems for real property tax collection which had been permitted to creak along unheeded in times of prosperity. Certainly so long as the real property tax remains an important source of governmental revenue, there is a need for adequate machinery for its collection. And now that the peak of the crisis in tax delinquency is passed, now that the almost irresistible pressure to retard still further the collection of delinquent taxes has diminished, the time seems appropriate for an examination of existing tax collection devices with a view to ascertaining how these may be remodelled to meet current needs. The articles comprising this symposium are directed in the main to a scrutiny of the present laws and to an inquiry into the possibilities for corrective change.

Since the tax collection process segregated for study in this symposium is but a segment of a larger whole and since each step in the process is organically related to the steps which precede and follow it, in delimiting the scope of the issue and of individual articles it has been necessary to draw lines dictated by editorial considerations rather than by those inherent in the subject matter to be treated. Thus, limitations upon space precluded separate treatment of that important factor in the property tax collection problem, the special assessment. Moreover, the hazards which

attend the editing of symposia operated to prevent the treatment of two topics when the persons who had consented to write thereon were precluded from doing so at a time too late for the enlistment of alternates. These topics are so closely related to those discussed in the issue that brief mention of them seems indicated at this point.

The first topic for which provision had been made was the consideration of that serious impediment to the efficient collection of taxes, the overlapping of taxing units. Not only does this wastefully augment the overhead costs of tax collection but it serves to confuse and burden the taxpayer. Perhaps of more consequence still is the fact that it leads frequently to a division of responsibility for the enforcement of delinquent tax liens among several governmental bodies, with the inevitable tendency to inaction which such division fosters. Schemes which make one of several units primarily responsible for collection or which erect a hierarchy of tax lien priorities not infrequently have operated to the disadvantage of certain of the units involved. Obviously the basic remedy for this situation is consolidation of the overlapping units, but for political reasons this proposal approaches counsel of perfection. Consolidation of tax collection and enforcement functions is probably more feasible, and the devices, statutory and administrative, to this end imperatively call for careful consideration at this time. And related to this problem is that of assuring the vesting of responsibility for tax collection in a competent appointive official, clothed with adequate powers, served by an adequate staff, and subject to supervision by a state administrative agency.

The second of these topics was the problem of how urban communities can best utilize tax delinquent land which has reverted to them. This problem is, of course, analogous to that facing rural regions, which is considered in Professor Wager's article in this issue. Certain sections in almost every city have, as a consequence of unplanned and uncontrolled development, reached a point where chronic delinquency is inevitable. Tax sales of properties in these sections do not result in their passing into "stronger hands." Unless the city is able to arrest the process, neighboring areas are likely to be affected similarly. Careful planning, coupled with prompt and decisive action by tax enforcement officials, may, however, not merely eradicate this source of urban blight but also convert what has been a liability into a valuable asset to the community.

D. F. C.

EXTENT AND DISTRIBUTION OF URBAN TAX DELINQUENCY

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The general property tax has developed a degree of unreliability since 1930 which has been particularly disconcerting to municipal governments throughout the United States. But whatever may be said of its imperfections, it continues to be the chief dependence of the local revenue system and, as such, has special need for an appraisal based on recent performance.

The peculiar importance of this major source of municipal revenue may best be determined by consideration of its relation to the budget. It is, in the first place, a deficiency tax. The budget makers, in arriving at the revenue estimate for the year, customarily total the miscellaneous items, usually minor in amount, and then set the general property tax levy at a figure which will fill the broad gap to bring revenues into balance with appropriations. While this procedure is not tenable in those municipalities which operate under a rigid tax rate limitation, it is so generally the practice as to emphasize the necessity for stability and regularity in the inflow of *ad valorem* tax receipts.

Not only is the general property tax depended upon to provide sixty per cent or more of the annual operating revenue in most municipalities, but in the past it has been rather universally treated, in the making of budgets, as a thoroughly stable source of income. Revenue estimates ordinarily included the full tax levy for the year, without thought of reserves for possible deficiencies in collection, and depended either on the receipt of delinquent taxes or on temporary borrowing to make up any shortage in the income from the current levy. Uniform budget laws in a few states, in fact, went so far as to make this procedure practically mandatory. Thus the typical budget system, as well as the local revenue system, was geared to the dependability of the general property tax.

What might be called the hand-to-mouth existence of the average city also imposes the requirement of reliability on *ad valorem* taxes. Very few cities build up large cash reserves for operating purposes. Most of them depend on the current receipts of each year to care for the year's current expenses, and the great majority find it

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regularly necessary to do temporary borrowing in anticipation of taxes, particularly as fiscal years and tax collection periods are not, as a rule, well synchronized.

With the majority of cities conducting current operations partially on credit there is still further dependence on the regularity of the major source of income. While tax anticipation loans have long been a popular medium for short term investment, recent experience has shown that their availability cannot be relied upon in a crisis when the rate of repayment becomes uncertain. And not only is steadiness of primary income a controlling factor in determining the rate and availability of short term credit, but it has come to be a very influential factor in a municipality's ability to sell bonds advantageously. Few items are scanned more carefully by prospective creditors than the record of tax collections.

Scientific methods of control in the execution of the budget, finally, offer comparatively little relief when receipts from taxes fail to measure up to expectations. Because of the preponderance of fixed and quasi-fixed charges there is a relatively small margin in any municipal budget for the underspending of appropriations to meet a sudden shrinkage in income. To principal and interest requirements for debt, often reaching one-third or more of the total budget, there must be added such fixed charges as those for retirement funds. Salary schedules and increments are often fixed by charter or statute and therefore not subject to hasty reduction, and most of the municipal functions performed are of such basic utility to the community as to prevent their drastic curtailment. Certain of them such as welfare, in fact, tend to become more demanding in periods of declining capacity to collect revenue. In some jurisdictions, moreover, cities acting as the collection agencies for school district, county and state taxes are required by law to remit these levies in full each year, irrespective of funds actually received.

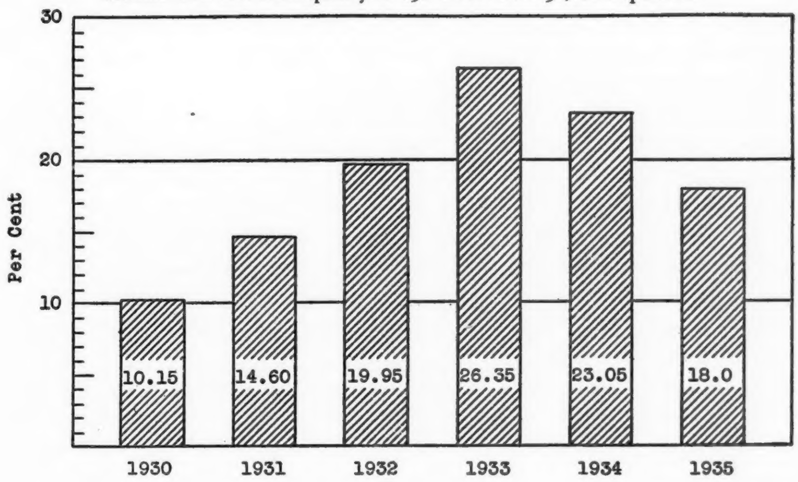
Most municipalities, in other words, entered the period of the depression with their ability to maintain operations adequately, to meet their obligations promptly, to sustain their solvency, and to cope with the special demands of unemployment, dependent on revenue and budget systems which presupposed a steady, even flow of general property taxes which would approximate each year's levy.

Even in the middle 1920's tax delinquency in some cities began to show a gradually upward trend, particularly where land and building booms had created an unsubstantial tax base. There was a warning in this movement which might have been noted, had the tax delinquency index received the amount of attention more recently accorded it. Through 1930, however, the increase in delinquency had not become universal and it had not gained sufficient momentum to threaten seriously the balancing of municipal budgets. The median year-end tax delinquency for 150 cities of over 50,000 population in 1930 was 10.15 per cent, a record still sufficiently close to normal to make its reattainment appear, at the present time, a fairly satisfactory objective of recovery.

The accompanying chart shows the median year-end delinquency for 150 cities

of over 50,000 population from 1930 through 1935 inclusive. The percentages represent delinquency at the close of each fiscal year on that year's levy only and do not reflect the likewise retarded collections of delinquent taxes. Including, as they do, 79 per cent of all cities in their population classes, they give a reasonably accurate picture of the average experience of the more important cities generally throughout the country.

TREND OF TAX DELINQUENCY, 1930-1935
Median Year-end Delinquency of 150 Cities Over 50,000 Population



In 1931 the mean delinquency rose 4.45 points to 14.6 per cent, still a fairly comfortable state of affairs from our present point of view. But in 1932 taxpayers stopped paying taxes in earnest and delinquency rose to 19.95 per cent. The following year brought with it its sweeping inundation of bank closings and frozen funds and tax delinquency reached a peak, in 1933, of 26.35 per cent. The average municipality, in other words, had suffered an increase of 16.2 points in delinquency from 1930 and was able to collect within the year less than three-fourths of the taxes which it had levied that year.

The median figure, needless to say, did not reflect all the realities of the situation. At one extreme were municipalities whose year-end tax delinquency in 1933 had mounted to thirty, forty, fifty and even as high as sixty per cent. It is not strange that under such circumstances some of them reached the financial breaking point. At the other extreme, a not inconsiderable number of cities continued to enjoy excellent tax collections, some of them showing better results in 1933 than had the average city in 1930 and some experiencing a relatively small increase from normal delinquency.

Not only was the average city faced with the failure to receive over a fourth of its 1933 taxes when due, but it was confronted with an ominous cessation of delinquent tax receipts which in former years had been depended on to supply the difference. It was the exceptional city that had total tax collections in 1933 reaching 90 per cent of the year's levy and it was not unusual to find them falling to 70 per cent or even lower. This predicament posed problems of fiscal administration and policy which have not yet received all the consideration called for, and it encouraged serious concern as to even the ultimate collectibility of large segments of revenue assets which in times past had been confidently depended on. Tax collection administration, budget making and the municipal revenue system lay open to more critical analysis in the light of the weaknesses exposed.

Belying the forebodings of the forecasters of disaster for municipal governments generally, tax collections in 1934 took a turn for the better, with a medium improvement of 3.3 points from the peak of 1933 to a year-end delinquency level of 23.05 per cent. While this very modest degree of improvement fell short of reducing the general average even to the 1932 level, it was somewhat reassuring because it was participated in by 83 per cent of the 150 cities. A further cause for encouragement was the influx of back taxes, but this was partially discounted as a dependable index because of the more than $100,000,000 advanced for this purpose by the Home Owners' Loan Corporation.

The continued decline in tax delinquency in 1935 was somewhat more conclusive as the median year-end ratio dropped 5.05 points to 18 per cent, indicating that half the ground lost since 1930 had been regained. Here again, however, the degree of recovery was so varied as to call for speculation regarding the causes. While some of the gains by individual cities were still negligible and a few continued to lose ground, 26 of the 150 collected a higher percentage of the year's taxes in 1935 than they did in 1930 and nine others came within a very small margin of equalling their 1930 records. The list includes both New York and Philadelphia.

In only a very few of this distinguished group can the results be attributed to a taxpaying capacity superior to that of 1930 or to drastically lower tax levies. For most of them changes in tax collection procedure have been either a contributing or dominating influence. These changes included the institution of quarterly tax payments, the billing of taxes earlier in the fiscal year, the elimination of personal property taxes in the instance of New York, the advancement of delinquency dates and increase of penalties, the holding of more regular tax sales, and the provision of an instalment system and the remission of penalties on back taxes, contingent upon the prompt payment of current taxes. A more pertinent demonstration would hardly be needed that a goodly portion of the unreliability in general property tax revenue has been the result of faulty administration rather than incapacity to pay.

Somewhat counteracting the fear that the depression would leave many municipalities crippled by the permanent loss of large amounts of revenue anticipated in

their tax levies has been the continuation of the influx of back taxes which began in 1934. By the close of 1933 many cities found themselves with uncollected taxes approximating or even exceeding an entire year's levy. It is the liberating of these frozen assets which is expediting municipal financial recovery to a degree not reflected in the slow return toward normal of tax collections within the year of levy.

The average city, in 1935, had the novel experience of collecting a slightly larger amount of taxes than called for in the current levy. In 111 cities of over 50,000 population the median ratio of total collections to the year's levy was 101 per cent. In only 19 did total collections fall below 95 per cent and at the other extreme they rose to such levels as 122.9 per cent in Seattle and 109.6 per cent in Philadelphia. Except in a minority of instances in which delinquent taxes were pledged as security for debt, the effect was to simplify the balancing of 1935 budgets and to facilitate balanced operations in 1936.

A preliminary sampling of the tax collection trend in 1936, based on 50 representative cities, shows current collections averaging 4.1 points better than in 1935 and suggests a probable decline in year-end delinquency to the level of 1931.

Still further refuting the fear that the deflationary influences of the depression would necessitate the ultimate writing off, as unrealizable, of large amounts of levied taxes is the record of recent delinquency on the tax levies of the last four years. It appears that when tax collection administration is organized with even a moderate degree of effectiveness the losses on realty taxes, under average conditions, will be very small. This does not always apply to personal property taxes, but their relative proportion of the total is sufficiently small, as a rule, to have but a minor effect on total results. In the case of taxes based on speculatively valued unimproved property some losses may be anticipated, but on the whole the collection of delinquent taxes is producing an encouraging record. This is illustrated by the following table showing the median delinquency for 97 cities over 50,000 population, on the levies of the last four years as it stood at the close of the 1935 fiscal year. Data illustrating both the average and the extremes are included.

DELINQUENCY ON RECENT LEVIES AT END OF 1935 FISCAL YEAR

Levy of	*1935*	*1934*	*1933*	*1932*
Median, 97 Cities	17.3%	10.5%	7.0%	4.4%
Charlotte, N. C.	19.8	12.1	9.3	6.5
Chattanooga, Tenn.	16.7	7.6	6.8	3.5
Newark, N. J.	26.5	11.8	6.3	5.1
Yonkers, N. Y.	25.1	12.8	6.5	4.6
Richmond, Va.	13.4	5.7	3.3	1.6
Bridgeport, Conn.	11.0	6.5	3.2	1.3
Flint, Mich.	28.4	20.5	20.7	15.5
Tacoma, Wash.	29.7	19.2	21.8	10.3
Tampa, Fla.	38.5	24.2	20.6	15.1

Discussion thus far has concerned itself primarily with the general trend of municipal tax delinquency. Fully as significant is the relative experience of various types of cities in different sections of the country. The drawing of conclusions and the making of comparisons from the year-end delinquency records of individual cities is somewhat hazardous because of their wide diversity in tax collection practice. Since tax delinquency is as much an index of administrative efficiency as it is of taxpaying capacity, there is always the question as to what part of a given delinquency ratio represents inability to pay and what part official negligence regarding collection. A high end-of-year delinquency may, for example, be mitigated by an excellent record of total collections of delinquent taxes within a short period. Both Massachusetts and New Jersey municipalities, for example, have high year-end delinquency records. In the case of the former, however, it is the result of very late billing and penalty dates, with this shortcoming largely offset by the holding of regular tax sales within a few months of the close of the fiscal year. In the case of the latter, it has been a product of lax traditions of administration, and tax sales often have been perfunctory or even neglected.

Year-end statistics, however, are still of real value in showing comparatively the swing from normal in ability to collect taxes under adverse conditions and in reflecting the degree of synchronization between the fiscal year and the receipt of the year's current taxes. The accompanying table shows the year-end delinquency record from 1930 through 1935 of 45 representative cities, selected to illustrate four typical conditions: (1) outstandingly good records both as to promptness and stability; (2) records of normally less satisfactory year-end results but relatively good year-to-year stability; (3) records following closely the general average of stability; (4) records indicating an abnormal degree of instability.

Two characteristics in particular explain the remarkably strong records of the cities in Group I. They have unusually well rounded, ample and stable resources and, with possibly one or two exceptions, their methods of tax collection are sound and aggressive.

The cities of Group II likewise have the advantage of resources of better than average stability. Hartford, for example, is a great insurance center as well as the state capital, while in Bayonne well entrenched industries pay over half the taxes. Tax collection administration, however, varies as to effectiveness, with considerable laxity of method in Bayonne, Charleston and Jacksonville and with effective pressure delayed to the second year in the Massachusetts cities.

No such generalization is possible for the rather normal delinquency trend of the cities in Group III. None suffered more than the average from the depression, but the majority was somewhat lacking in effective collection methods. Glendale and New Britain, with more than average efficiency of administration, did better than might have been anticipated, while New York City restored its collections to the 1930 level in 1935 largely through tax and administrative reforms.

THE TREND OF TAX DELINQUENCY, 1930-1935
Forty-five Representative Cities over 50,000 Population

City	Percentage of Delinquency on Year's Levy Year Ending						Points Increase 1930-Peak	Points Recovery Through 1935
	1930	1931	1932	1933	1934	1935		
Group I..........	Outstanding Records of Prompt Collection and Stability							
Albany, N. Y.........	7.6	8.2	11.1	13.6	10.5	8.1	6.0	5.5
Berkeley, Cal..........	2.9	3.3	4.8	7.3	5.6	4.9	4.4	2.4
Binghampton, N. Y....	3.3	4.5	6.9	8.8	8.7	7.3	5.5	1.5
Denver, Colo..........	3.1	4.3	7.7	10.2	5.4	4.4	7.1	5.8
Fresno, Cal...........	2.0	2.6	4.8	7.5	5.0	4.2	5.5	3.3
Louisville, Ky.........	8.5	10.2	10.5	13.7	10.3	9.3	5.2	4.4
Oakland, Cal..........	3.8	4.7	6.6	9.0	7.7	6.5	5.2	2.5
Providence, R. I.......	0.8	0.9	1.0	2.0	3.2	4.2	3.4	...
San Francisco, Cal.....	1.5	1.6	2.2	5.4	4.9	3.3	3.9	2.1
San Jose, Cal..........	0.5	1.5	2.4	5.6	4.6	3.0	5.1	2.6
Group II.........	Normally Less Prompt Collections Showing Good Record of Stability							
Atlanta, Ga...........	14.6	16.3	20.0	20.7	13.4	10.7	6.1	10.0
Bayonne, N. J.........	20.5	19.4	23.9	26.8	25.0	24.9	6.3	1.9
Cambridge, Mass......	26.9	27.2	30.6	33.9	30.1	26.7	7.0	7.2
Charleston, S. C.......	20.7	26.8	27.0	26.3	21.7	18.7	6.3	8.3
Dallas, Tex...........	11.6	14.4	12.9	16.0	14.1	10.2	4.4	5.8
Hartford, Conn........	8.8	8.8	10.6	15.0	15.1	12.8	6.3	2.3
Jacksonville, Fla.......	25.1	23.4	26.6	27.0	20.0	18.0	1.9	9.0
Manchester, N. H.....	12.3	13.0	17.0	18.7	15.4	15.2	6.4	3.5
Newton, Mass.........	24.2	25.8	29.6	32.3	31.3	24.1	8.0	8.1
Utica, N. Y...........	9.3	12.8	15.4	16.0	16.2	14.4	6.9	1.8
Group III........	Closely Following the Average Trend							
Fort Worth, Tex.......	14.4	16.8	21.4	28.2	27.5	24.7	13.8	3.5
Glendale, Calif........	3.7	7.6	14.3	16.4	15.4	10.9	12.7	5.5
Harrisburg, Pa........	6.2	11.0	17.4	22.6	18.2	12.9	16.4	9.7
Kalamazoo, Mich......	5.7	9.2	16.3	24.9	15.2	13.9	19.2	11.0
Lancaster, Pa.........	8.7	9.9	16.2	22.4	17.4	11.0	13.7	11.4
Memphis, Tenn........	12.6	16.8	22.4	25.9	23.1	21.7	13.3	4.2
Mount Vernon, N. Y...	11.2	14.0	22.3	30.5	26.0	20.0	19.3	10.5
New Britain, Conn.....	8.8	12.7	14.2	16.9	14.4	11.9	8.1	5.0
New York City, N. Y..	14.6	17.7	26.5	26.4	21.2	15.8	11.9	10.7
Omaha, Nebr.........	5.5	7.9	14.9	19.3	16.9	14.0	13.8	5.3
Group IV.........	Showing Excessive Instability in Depression							
Altoona, Pa...........	15.9	23.4	36.8	41.7	33.5	29.2	25.8	12.5
Asheville, N. C........	26.0	30.2	47.8	53.7	49.4	37.4	27.7	16.3
Atlantic City, N. J.....	36.1	43.1	55.5	63.6	49.2	40.3	27.5	23.3
Beaumont, Tex........	9.2	12.2	22.0	33.5	26.9	22.2	24.3	11.3
Canton, O............	8.8	13.5	25.7	34.9	27.2	19.1	26.1	15.8
Detroit, Mich.........	10.8	17.2	25.0	34.8	31.3	25.5	24.0	9.3
Erie, Pa..............	17.4	21.3	27.6	47.1	46.6	26.0	29.7	21.1
Flint, Mich...........	9.5	17.2	25.2	36.6	32.1	28.4	27.1	8.2
Hoboken, N. J........	19.9	24.2	33.7	43.0	41.4	40.8	23.1	2.2
Johnstown, Pa.........	15.1	20.4	33.5	47.1	37.9	29.3	32.0	17.8
McKeesport, Pa.......	10.0	12.7	26.7	34.2	28.4	14.0	24.2	20.2
North Bergen, N. J....	....	48.1	57.3	60.2	54.2	44.8	....	15.4
Tacoma, Wash........	17.8	25.8	32.5	46.6	33.3	29.7	28.8	16.9
Tampa, Fla...........	13.4	21.9	34.2	44.8	37.1	38.5	31.4	6.3
Youngstown, O........	8.1	15.1	33.4	42.1	35.2	28.7	34.0	13.4
Median, 150 Cities over 50,000 Population...	10.15	14.60	19.95	26.35	23.05	18.0	16.2	8.35

The cities of Group IV readily identify themselves in the classification of those upon which the ravages of the depression fell the most severely. Two-thirds of them, moreover, were forced to default on debt. They include cities dependent upon a single dominant industry—notably automotive, rubber, steel, building material, railroad shops, recreation; cities which were victims of excessive real estate promotion; and cities which experienced the most severe banking disorders. Another characteristic stands out strongly, however. Not one of the fifteen had an outstandingly satisfactory system of tax collection administration and those of the majority were notably mediocre or weak.

Accumulated delinquency needs to be studied in conjunction with the year-end trend to determine the effect of the depression on municipal tax collections. The relation of the total accumulation of delinquent taxes at the close of 1935 to the levy of that year offers opportunity for significant comparisons. Data for 108 cities of over 50,000 population show the median figure for the entire group to have been 48.4 per cent, indicating that the average municipality was slightly less than one-half year's levy short of realizing the total taxes due at the close of the last fiscal year. As in the case of year-end delinquency, a small group of cities was particularly outstanding for ability to collect taxes. Thirteen of the 108 showed an accumulated delinquency ratio of less than 25 per cent. Binghamton, N. Y., Providence, San Francisco and Cedar Rapids, Iowa, had ratios below 10 per cent. At the other extreme, 11 cities had accumulated tax arrears at the close of 1935 in excess of the year's levy.

Again generalization is complicated by variations in administration as well as in taxpaying capacity. The cities of California, by and large, secured the best results, with most of those of New England, New York, Maryland, and the middle western farm states showing better than average records. The municipalities of Florida, Michigan, Ohio, New Jersey, Washington and South Carolina, on the other hand, had, in general, the poorest records. Throughout the country, however, there is a strong correlation between the rate of delinquency and the combined factors of stability of resources and methods of administration.

The effect of tax delinquency during the depression on the balancing of budgets has been by no means uniformly in proportion to ability to collect taxes. True, those cities which have enjoyed high and prompt collections have had a relatively simple problem of budget balancing, as even the perfunctory policy of depending on the receipt of tax arrears to offset current delinquency at no time left them far short of the cash needed to cover appropriations.

The budgetary experience of cities whose delinquencies approached the average or ran higher, however, was closely related to the effectiveness of the method employed in estimating receipts. Cities which computed estimated receipts, both of current and delinquent taxes, on the basis of actual experience and reasonable expectations were able to hold their operations near enough to a balanced basis to

avoid financial difficulties even in the most unproductive years. This was done successfully by a few cities whose year-end delinquency ran as high as 35 per cent. The situation did create a serious dilemma, however, for the maintenance of cash basis operations necessitated inflation of the tax levy and the imposition of a more than normal burden on the actual taxpayers to offset the failure of the delinquents.

A great many cities, particularly in the eastern states, however, made no recognition in their receipt estimates of the trend of tax delinquency. By 1932, as a consequence, they had piled up large cash deficits and by the close of 1933 were confronted by an almost unmanageable state of affairs. In many instances banks had continued to permit the piling up of operating loans and thus had encouraged the maintenance of lax policies. In areas where tax sales were continued regularly and budgets contained reserves sufficient to offset taxes ultimately uncollectible, short term credit usually was still extended when banks had facilities to do so. But where normally lax tax collection administration became more undependable, cities frequently found themselves with their means of financing suddenly terminated. In some instances this precipitated default and, in many others, necessitated the working out of elaborate plans of deficit funding. New York City, for example, had an operating debt of a quarter of a billion dollars at the close of 1933 and was forced to enter into an agreement with the bankers which was little short of a temporary receivership.

The great majority of such cities have now succeeded, by one means or another, in stabilizing their current accounts, although some will still be engaged, twenty, thirty and even forty years from now, in paying off the bonds floated to finance their operating deficits of the depression. The fact remains, however, that many cities have not improved their budget making policies to guard against the future recurrence of this type of predicament, and many have not altered their methods of tax collection administration to assure themselves of steadier revenues and of sounder credit for emergency borrowing should it become necessary.

The rise of urban tax delinquency has been discussed factually as one of the disturbing phenomena of the depression and the general economic and administrative causes have been pointed out. Brief consideration of the types of property which contributed most to abnormal delinquency, however, will throw further light on possible means of securing greater stability for the major source of municipal income. The evidence points to real estate speculation and the inadequate municipal control of subdivisions as generally responsible for the worst elements of tax delinquency. An intensive survey of urban tax delinquency in 62 cities conducted by the Bureau of the Census, Division of Real Estate Taxation, in 1934,[1] educed the facts that the median rate of delinquency among ten types of property was highest for vacant lots, second and third highest for apartment houses and multiple dwellings and fourth highest for hotels.

[1] U. S. BUREAU OF THE CENSUS, REALTY TAX DELINQUENCY (1934).

The most thorough extensive analysis of types of tax delinquency which has been made was that of Westchester County, New York, by the staff of the Institute of Public Administration under the auspices of the Westchester County Commission on Government.[2] This survey covered four cities and 18 towns in a well-to-do section of the New York metropolitan area which experienced very marked growth and speculative real estate activity in the 1920's. Of 63,494 properties found to be in arrears on 1933 taxes, 50,521 consisted of lots in subdivisions and of parcels of acreage which contained no buildings or other structures. Of the 18,174 of these parcels of vacant land whose records were checked back over a period of years, one-fifth were found to have been in arrears continuously since 1925. The survey observes, further, that the arrears on homes would not have been sufficiently large to account for the acute crisis in local finance which existed at the end of 1933. The analysis demonstrated with preciseness "the fact that the greater part of the outstanding arrears of taxes have accumulated in all parts of the county against two types of property—vacant lands in premature subdivisions, and large multifamily and business buildings erected in premature apartment house and building zones." While similarly complete quantitative analyses have not been made generally, the preponderance of evidence is that the collapse of speculative real estate undertakings has been responsible for a very large share of all abnormally high tax delinquency.

For most cities, the crisis caused by the rapid decline of receipts from general property taxes has passed. Even without a return, as yet, to normal year-end collections, the average city is now in a position to balance its budgets readily through the compensating influx of taxes in arrears. While the stringency was of relatively short duration, it not only worked havoc with the credit and the operating stability and efficiency of a large number of municipalities but left some of them in a position to suffer from its adverse effects for a generation. There could have been no stronger type of demonstration of the need for all the stability possible in the major source of municipal revenue.

A rise in tax arrears is to be anticipated in any major depression, but abnormal increases can be largely guarded against, and unavoidable fluctuations offset by financial planning. Any program looking toward future stability, however, must embody provisions for synchronizing tax and fiscal years, for developing sound, businesslike methods of tax assessing and collecting administration, and for intelligent subdivision control which will discourage the excesses of real estate speculation. Such a program calls, also, for the elimination of perfunctory and visionary revenue estimates in the budget and the adoption of a more realistic basis for this important aspect of budget making.

[2] Westchester County Commission on Government, *Land Use and Local Finance* (1935).

TAX DELINQUENCY OF RURAL REAL ESTATE

DONALD JACKSON*

Tax delinquency of rural real estate has presented an increasingly serious problem since 1928, though, in fact, a gradual increase in the extent of the problem had been occurring before that year. For selected counties (towns in New England) throughout the country the area of land delinquent has nearly trebled since 1928 according to tabulations and estimates by the Bureau of Agricultural Economics of the United States Department of Agriculture.[1]

The acreage and the amount of taxes delinquent on the levies of 1928-1932 are shown by geographic divisions in the following table. These figures represent the total delinquency of rural real estate on each levy and do not distinguish between those delinquent in only one year and those repeatedly delinquent. In many cases the taxes reported delinquent were paid soon after the delinquency date.

TOTAL DELINQUENCY OF RURAL REAL ESTATE TAXES IN SELECTED COUNTIES, LEVIES OF 1928-1932

Geographic Region	Total Counties in Region	Counties Included in Table	1928		1929		1930		1931		1932	
			Acres *	Taxes *	Acres *	Taxes *	Acres *	Taxes *	Acres *	Taxes *	Acres *	Taxes *
	Number	Number										
New England.....	2,008[1]	513[1]	694	$ 952	773	$ 1,087	927	$ 1,316	1,220	$ 1,748	1,500	$ 2,152
Middle Atlantic...	150	46	1,188	948	1,381	1,112	1,577	1,327	2,366	1,974	3,532	2,792
East North Central	436	68	2,234	1,114	2,657	1,400	3,444	1,954	4,894	2,828	5,859	2,776
West North Central	621	115	11,372	4,198	13,116	5,193	16,937	6,765	23,622	8,989	25,877	8,603
South Atlantic....	553	109	5,183	1,834	6,000	2,103	7,978	2,645	10,716	3,297	12,632	3,408
East South Central	364	123	4,842	1,281	5,161	1,361	7,979	2,172	10,993	2,743	12,570	3,017
West South Central	470	95	4,489	1,300	5,380	1,615	10,156	2,737	15,419	3,832	19,255	3,732
Mountain.........	277	62	7,584	1,656	8,556	1,888	11,235	2,369	16,192	3,226	19,318	3,897
Pacific...	133	31	1,847	872	2,651	1,153	4,989	2,259	7,402	3,273	8,911	3,865
United States..	...	..	39,437	14,159	45,679	16,916	65,227	23,549	92,828	31,914	109,458	34,247

[1]Townships, as the data were collected on a township basis in New England. * In thousands. ED. NOTE: In reducing the data to thousands, any excess over the figures stated was disregarded.

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[1] Administering a Civil Works Administration Project in 1932-1933, the Bureau of Agricultural Economics collected data on rural real estate tax delinquency for the levies of 1928-1932. Data were obtained for about two-thirds of the counties in the country, and for about one-fourth of the counties the data were tabulated in detail.

The number of tax certificates, or tax liens, sold has increased more rapidly than has delinquency, but they have been sold against a relatively small portion of the delinquent acreage. The tax deeds given, that is actual transfers of title resulting from tax delinquency, are very few in number. In cases where private buyers purchase tax liens the taxing jurisdictions obtain their money but the owners of the land are not relieved of their obligation. In other cases the state or the county has acquired tax liens or simply carried the delinquent taxes as an "open account," and has so far failed to collect the tax. The area consequently left subject to tax liens held by taxing jurisdictions has increased more rapidly than has the total area delinquent. The subject thus involves two distinct problems, that of the taxing jurisdiction in collecting tax revenues, and that of the farmer in trying to pay his taxes (current and delinquent) and free his real estate of tax debt. The taxing jurisdictions have been more interested in obtaining revenue than in taking tax liens or acquiring extensive real estate holdings. Their attention consequently has been centered on the problem of collection. Land owners, caught in the economic maelstrom, have been searching for methods of avoiding heavy penalties or the loss of their property. They have voted for reductions in expenditures and for shifts in the distribution of tax levies; they have begged for leniency; and in scattered instances apparently they have conspired to prevent tax collections.

State legislatures have had to face the resulting problems. Though governmental expenditures can be reduced to some extent, they are in large part necessary—made so by the citizens' demands for governmental services. The legislatures must find ways to collect taxes, but taxes can be collected only from those with means to pay them. Adequate understanding of the problem of tax delinquency requires the taking of this fundamental legislative view of availability of tax money for governmental revenues, and this is the principal point to be emphasized in the brief discussion below.

The tax delinquency problem is in a very real sense as broad and intricate as the subject of public finance. Its understanding, and to some extent its solution, has suffered from unwarranted simplification in its treatment. There has been pretty generally a failure to analyze the problem adequately. The first appearance or evidence of delinquency is failure to collect revenue, and a tendency has developed to look upon delinquency purely as a problem for the tax collector. In the last analysis this attitude assumes that all tax delinquency is voluntary. Even in these recent years of wholesale delinquency, various academic and governmental bodies considering the matter of tax revenues have prescribed greater severity of penalties, higher interest rates, and stricter administration of collection laws as the appropriate correctives for the situation. This is what may be termed the tax collector's view point. The tax collector is given no discretion, and should be given none, as to his essential duties. Obviously it is a legislative function, supplemented by executive and administrative regulations, to prescribe the manner and amounts in which taxes shall

be levied since it encompasses consideration of the whole body of government. The tax system must be developed as an integral part of the organization of governmental service. In sound planning each service established must be based upon a visible source of revenue. Services cannot be permanently given without such revenue. The fundamental problem of the tax system then becomes that of spreading a levy or group of levies over the property, income and privileges of the community in such a manner as to produce revenue equal to the total cost of services furnished to society through the governmental units.

It is not the place of the assessor or tax collector to question the taxation which is imposed. The situation is parallel to that of private debts. Assuming that the private debtor is solvent, it is the business of the collection agent to use every legitimate means in pressing for collection. It is a patent fact that many private debtors and many "taxpayers" will delay or avoid payment if possible. It is no less patent that many persons who, by industry and good management could pay their debts and their taxes, will fail to do so. Some members of this latter class are so incompetent that delinquency and insolvency will finally eliminate them from the debtor class and the taxpaying class. Many, however, can with economic or social pressure be encouraged to meet their obligations. In these latter instances considerable pressure undoubtedly is justifiable.

In no small part an overemphasis of the tax collection job has led to a biased interpretation of the tax delinquency problem as a whole. Several factors have combined to this end. In a broad and general way the opposition and clash of economic interests may be held largely responsible. Legislatures probably must of necessity partially represent economic interests, as opposed to those of individuals; and tax levies are distributed accordingly. In legislation, however, tax delinquency is only potential, whereas in the administration of the tax laws it becomes actual. The problem thus presents itself to the collector in a far more direct and forceful manner than it does to the legislature.

It is in many cases absolutely impossible to define a point or level at which failure to pay a debt or a tax bill ceases to be voluntary and becomes an economic necessity. This is particularly true with low-income groups. The farmer, the small business man, the small home owner, commonly varies his expenditures in consumption, depending upon his total income. With the farmer the terms "net income" and "profits" are arbitrary or ambiguous. Out of his gross receipts he must meet direct business charges, overhead and consumption costs. During the depth of the depression years following 1929, the income available to farmers for accustomed consumption purposes fell close to zero. In numerous cases, of course, the net actually became a negative. Only by lowering his standard of living radically could such a farmer pay his business costs and his debts. His ability to pay taxes became contingent upon his ability and willingness to lower the consumption standards of his family or to delay payment of private debts. He frequently was forced to choose

between tax delinquency, business insolvency or painful deprivation for his family.

It becomes apparent when these facts are considered that tax delinquency cannot be considered as usually voluntary, and the development of delinquency during the past decade bears out this interpretation. The increased delinquency which has come about has accompanied economic distress. It has grown with adverse changes in the taxpayer's economic situation, not with changes in tax laws. It is true that the administration of tax laws has changed to some extent during this period. The nature of the changes has been so varied, however, that it is impossible at the present time to classify their effects upon tax collections. In some communities pressure upon the taxpayer has been increased on the assumption that he could pay if he would; in others pressure has been lessened on the assumption that many taxpayers were in an impossible economic situation and could not pay.

The typical property owner's view point, of course, has been quite opposite to that of the tax collector and fiscal officer. He has assumed that delinquency is a necessary consequence of the economic conditions which have prevailed. In many cases he has lowered his standard of living, redoubled his efforts to produce greater income, and still has found himself unable to meet his tax bills and his private debts.

Of course, taxes or debts can be paid with borrowed money, but this assumption often has counted for too much in the consideration of tax problems. It is, in general, during hard times that income is insufficient to meet costs. These are the same times in which it is most difficult to renew loans or to borrow for tax purposes. In this regard also the property tax offers a far more difficult problem than does the income tax. Both the amount of the tax levy and the ability to borrow for tax purposes are related to the value of the property. Most of the time the value of a specific piece of property is hypothetical. Even academic agreement on an acceptable definition of value is difficult to attain, and when attained it still is academic. Only occasionally is the sale value of a given property actually known. Even then, it is only in a narrow sense that we can assume the exchange price to be a good representation of "true" value as defined in the economics text books. An unwise buyer or an unwise seller may produce a sale-value figure quite at variance with that which would theoretically result from the bid and offer of a marginal buyer and a marginal seller in an open market. Furthermore, sale value would apply only at the moment of sale.

Determination of value by the capitalization of net income is quite a different matter. It can not apply as at a given moment. It must be an average or net result for some specific accounting period. The choice of this period is purely an arbitrary matter. There undoubtedly are many farmers for whom net income during the depression years was a very slight fraction of their average for the preceding decade.

What value is an equitable one on which to levy taxes? If it is sale value many properties should have paid no taxes during the years 1931 and 1932. And, of course, sale value will always be out of date except for a relatively small number of properties

which have recently changed hands. If it is the value resulting from capitalization of income, the appropriate tax levy will depend entirely upon the period chosen over which to determine average value.

This difficulty with the meaning of "value" is one important reason why the work of the tax assessor presents such difficulties, and is so unsatisfactory in individual instances. The philosophers can not agree, and so they turn the practical problem over to the assessor, who normally has no special training in the subject of values, but who presumably is assumed in his community to have good common sense. And assessment is vitally linked to delinquency.

If one studies the assessment of individual properties in the average community he will be impressed with the apparent irregularities and injustices involved. If he studies it still more carefully, however, he is likely to be impressed with the fact that the assessor has done a very good job, considering the system and conditions under which he works. Related to the best scientific estimates available for true values, assessed values in a given community may be found to vary from as low as 1 per cent to as high as several hundred per cent. This comparison, when true, indicates great injustice in the resulting property taxation. Much of the reason must be admitted, however, to lie in the variations in size, type, physical quality, location and other internal and environmental factors, the significance of which the assessor is not prepared to appraise.

A recent report on the tax system of the State of Maine objects to making assessments of rural property in the early spring. It is stated that the assessor can not make a proper assessment when the land is littered with snow or the "debris" remaining from the previous winter. The opinion is ventured here that in the problem of the assessor of rural lands, snow and debris are insignificant in comparison with some of the value problems on which the economists themselves are unable to agree. A similar tax report complains of the deficient ability of the general run of tax assessors. At the same time it suggests for the assessor's use visual correlation processes which even for the accomplished statistician are indefinite and which for the uninitiated are a sheer mystery.

Thus in its nature tax delinquency of real estate is of these two general classes: (1) voluntary or wilful, and (2) economic or necessary. Individual instances of the two are intermingled in an unpredictable way. Sure classification of any one case would require a laborious, scientific analysis. Economic or necessary delinquency has occurred extensively. Even during the two decades before 1928 tax delinquency of rural real estate was increasing. Since 1928, it has increased in most states many fold. Not only has the area increased, but on the average the amount of unpaid delinquency per acre also has increased as unpaid levies have continued to accumulate.

The real problems of extensive delinquencies are beyond the collector and the assessor; they lie in the field of sociology and economics, and directly within the function of the legislature in its choice of bases of tax payments. It is well known

that much voluntary delinquency exists (even conspiratory delinquency in the form of tax strikes probably exists in scattered instances) and yet it is so intermingled with economic or necessary delinquency that the problem can not be treated as resulting solely from a perverse attitude on the part of taxpayers.

There are assessment problems and conflicts of interests which must be considered. For instance, it apparently is commonly accepted that delinquency normally will appear first and most frequently on low-value properties. But wherein lies the normality of this? It is a truism that with perfect assessment low-value properties are no more likely to become delinquent than are highly valued properties. It is a truism because theoretically taxes are assessed according to value, and value depends upon income either directly or indirectly through sale value which in turn will, in the long run, reflect anticipated income. Delinquency upon any one class or quality of real estate is a reflection upon the justice of the assessment system.

A more fundamental problem is the establishment of a tax system which will properly distribute the tax burden according to benefits received or ability to pay. The assumption here is that in general the distribution must be according to ability to pay or at least not beyond such ability. This point unquestionably is open to argument, but it will not be argued here as the main object is to indicate limits that affect tax delinquency rather than methods of distribution. In either case society as a whole must be considered, and it does seem apparent that certain members of society must be served by society collectively—that is, by government—beyond their ability to contribute. The total tax base must include the two general classes of ability represented by property and by income. In a homogeneous community either property or income alone might represent an appropriate tax base, but with the multitudinous varieties of economic activity today so easy a solution is impracticable. The less arbitrary the distribution of levies over the total ability of society, of course, the better, but the final decision almost certainly must be arbitrary because thus far the facts concerned have been too intricate for complete analysis.

The principal point to be made here is only that extensive delinquency of taxes, if that delinquency is economic, indicates a maladjustment in the underlying system. The tax collector can obtain payment only where means of payment exist. Beyond that point he is butting against a wall. It is through a readjustment in the levies, and only through that course, that economic and necessary delinquency can be reduced to a minimum.

Farm or rural properties quite usually carry lower tax rates than do urban properties. This can not be taken, however, as proof that farms are lightly taxed relative to other classes. Real estate is easy for the assessor to find, and taxes on real estate are relatively difficult to avoid. Many other types of tax paying ability do escape the assessor and the tax collector. Farmers and small home owners, as a class, have an exceptionally large proportion of their wealth invested in real estate,

and there seems no question that this fact more than offsets any rate differential in their favor.

An aspect of rural real estate delinquency which has become of particular importance in very recent years is that connected with land use. Does tax delinquency indicate an unfortunate use of the land? If the delinquency is voluntary it surely does not. If the delinquency is necessary or economic it still may be the result of maladjustment in assessments or in the underlying tax system.

When collection of delinquent taxes is forced by means of tax sales and consequent transfer of the land to "stronger hands," the taxing jurisdiction obtains its revenue, but the owner is dispossessed. Whether or not the land is transferred to hands which really are stronger, that is, to hands capable of obtaining from it a greater income, often is questionable. Where the delinquency results from unfortunate management the transfer may theoretically be justified. Where the delinquency results from a badly adjusted system or from general economic conditions, such as those of a general economic depression, such transfer is a questionable expedient either for obtaining immediate revenue or for improving land use.

The above discussion of delinquency of rural real estate settles few, if any, of the vital questions involved. The problem is far too intricate and difficult for such easy solution. One of the difficulties in its analysis in the past has been that the whole problem has been assumed simple, whereas it is as intricate as the whole system of government service and government revenues. The collection system can be greatly improved. Administration of the laws can be strengthened, but to do only that fails to get at the root of the social and economic problems involved. A good collection system and generally good administration can not correct a malformed tax system that fails to recognize the very low levels to which certain incomes and sources of funds fall in adverse economic periods. Any one cause which can rightfully be assigned for tax delinquency must be so general and so inclusive as to be entirely meaningless. One might as well attempt to assign a single cause for failure to meet private debts.

Tax delinquency is failure to pay taxes. Why does one fail to pay his debts, including taxes? The answer is interwoven through the whole subject of credit, or of public finance. Increased severity of collection procedure undoubtedly can be made to reduce voluntary delinquency, but it becomes apparent upon analysis that only through revision of the underlying tax system itself, to lighten the burden on real estate, can "economic" delinquency of rural real estate be reduced to reasonable proportions.

THE TAX CALENDAR AND THE USE OF INSTALMENT PAYMENTS, PENALTIES AND DISCOUNTS

JENS P. JENSEN*

It may be said in advance that any reform in the mechanics indicated in the title of this article is not likely to prove a major remedy for property tax delinquency. But the same may be said of any other possible property tax reform proposal. Delinquency is in itself an evil; but it is also a symptom of more basic maladjustments. It will have to be attacked in more than one way. However, the suggestions here made have merits on other grounds than mere prevention of delinquency.[1]

I. THE CALENDAR

Despite variations among them, the property tax calendars of the several states bear a family resemblance to each other. They were developed with certain requirements in mind, which were fundamentally the same in all the states. They grow out of the function assigned to the property tax in all the states. This tax is a deficiency tax, raising whatever sums are required by the local governmental budgets, and to a diminishing degree the state budgets, after the deduction of the revenue expected from other sources. The fact that this tax, for most local governments at least, furnishes nearly all of the revenue, does not minimize the use of the tax as the elastic element in the local and state tax systems.

The functions which the calendar is designed, or has been developed, to serve are simple enough in principle. First, the taxable property is to be assessed, a process

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[1] It is not attempted in this article to describe in detail the actual status of the several states in the matters treated. Attention is drawn to the following sources, among others, to which indebtedness is hereby acknowledged: Hunter, *Legal Provisions Affecting Real Estate Tax Delinquency, Tax Sales, and Redemption* (1933) Bull. No. 48, Bureau of Business Research, Univ. of Illinois; JENSEN, PROPERTY TAXATION IN THE UNITED STATES (1931); NATIONAL INDUSTRIAL CONFERENCE BOARD, STATE AND LOCAL TAXATION OF PROPERTY (1930); TAX RESEARCH FOUNDATION, TAX SYSTEMS OF THE WORLD (6th ed. 1935).

which is nothing more than the determination of the quantity and value thereof. Strictly speaking, only the value is required, since the tax is *ad valorem*. If the original assessment were acceptable to the taxpayers, only one more function would be required, namely, the extension of the tax on the valuation. Because the original assessment is faulty, or is deemed so by at least some of the taxpayers, several supplementary functions are required. Second, the calendar makes room for the local review, developed to iron out errors and inequalities among individual taxpayers. Third, the calendar must make room for an equalization among the political units, towns or counties, and among classes of property, to eliminate possible discriminations. Fourth, upon the roll, thus presumably corrected, the tax must be extended for every owner of taxable property in the county or town. Fifth, the calendar must as a practical matter provide for a waiting period, between the date when the taxes are due and the date on which they become delinquent, for the obvious reason that the payment requires time. At this point, as far as the taxpayer is concerned, the calendar might stop, if all went by the card, if all taxes were paid on or before the delinquent date. The fact that they are not all paid then, necessitates an extension of the calendar to provide for dates of sale, redemption, penalties, interest, and final granting of title to delinquent property. In this article, however, the attention is limited largely to the five parts of the calendar described above, the balance being treated in other articles in this volume.

In its relation to property tax delinquency, the calendar may be considered from three angles. First, most of the calendars are too long. They consume too much time between the assessment date (the date as of which the assessment takes effect) and the delinquency date (the date after which interest and penalties become effective). It is true that criticism of the calendars in some of the states may also arise because they do not adequately provide for all of the five essential steps in the procedure outlined above, by not providing, for example, for adequate local review or state equalization. And such omissions may produce poor assessments, which in turn may react unfavorably on the collection. But too long a calendar lengthens the time between the day when the tax becomes a lien on the property and the day on which it becomes delinquent. In this interval many things may happen to the property, especially in case of personal property, and to the taxpayer, rendering him unable or unwilling to pay the tax.

Implicit in the long tax-determination interval is the assumption that the tax, once levied, is safe for the treasury, because of the lien on the property. Relying upon this safety, the administration could proceed by leisurely stages, and protect itself by interest and penalties high and heavy enough to reimburse it for interest paid on money borrowed to offset the deferred payment or non-payment of delinquent taxes. But the lien is in fact not safe, on any class of property. Taxes on personal property, tangible as well as intangible, remain unpaid in large amounts because the property, present at the assessment, has been moved away before the delinquent day. Real

estate may be "skinned," by removing timber or minerals during the interval; laws making such skinning illegal are difficult to enforce, and in any case touch only the most obvious cases. Even in case of land and fixtures, the value, the essence of property for purposes of taxation, may vanish, as is all too frequently demonstrated in the taxes unpaid. Shortening the tax-determining interval would reduce these hazards to the tax lien.

The characteristic interval between the tax day and the delinquent day is 10-14 months, but the spread is wide on both sides of a norm of about 11 months. There is considerable opportunity for shortening the interval, as indicated by the fact that several states run as low as eight months. In those states which permit instalment payments, where the interval between the first and second payment is usually six months, the second half of the tax will not be payable until 15 to 20 months after the day as of which the tax liability attached to the property.

What is a reasonable interval for the determination of the tax liability of individual taxpayers, with respect to particular parcels of real property? If two months be allowed for the assessment, one for the local review, one for the preparation of the abstract for delivery to the state board of equalization, two for the state equalization, two for the extension of the taxes on the roll, and one for payment prior to the delinquent date, all the necessary functions of the tax-determination process would seem to be allowed for, and the total time amount to only nine months. This happens to be about the interval used in Wisconsin, and would seem to be ample, if the frills be eliminated. A number of states do the job in less time.

In the second place, although of less importance, it may be asked whether the interval, whatever it be, begins and ends at the most advantageous point in the seasons. Historically this factor has been important. Of the eight states in the southern tier of states, five begin their calendar with the assessment of January 1; one, of February; another, California, of March, while Alabama begins the year, "the year before," as of October 1. In contrast, of the 11 states in the northern tier, five begin on April 1 and four on May 1, the two nonconforming states preferring July and January, respectively. In the choice of these beginning dates, it was of weight that they marked the season when in an agricultural economy there would be no crops and, in short, a minimum value. The assessor, who was likely to be a farmer, would have time for the assessment; and in rough areas he would be able to "get around" relatively unimpeded by winter weather. In the choice of the delinquent dates, it was desirable that they should fall at a season when the taxpayer would likely be "in funds." Undoubtedly these factors are of less weight now. Particularly, it is difficult to find a season when the dominant class is in funds, all the more so where instalment payment is permitted.

In the third place, the calendar may be ill-proportioned, allowing improper time for the various functions, or it may be loaded with unnecessary details and processes which have gotten themselves imbedded in the system. For example the practice

of several states, chiefly in the south, of self-assessment appears to be a relatively useless procedure which, nevertheless, it would be difficult to remove. It probably saves very little time for the assessor when he comes to go after the items that have not been rendered voluntarily. It may of course be said that, say, two months spent by the assessor in receiving voluntary renditions of property are merely a sort of preliminary to the assessment; but they are really a part of it since they widen the interval between the tax day and the delinquent day.

But it would be foolish to place much faith in the shortening of the tax-determining interval as a remedy for delinquency so long as the present function of the property tax as a deficiency measure prevails. If the tax liability must be determined completely, barring resort to the courts on matters of law, and by a long and involved process as at present, before any tax payment is required, then the ultimate minimum of time required can not be much less than, say, eight months. If, instead of being an apportioned tax, calculated to raise any necessary amount, it were to become a percentage tax, with the rates stated in the law rather than to be computed as at present, then the property owner might be required to file a return, and remit payment with return, thereby materially shortening or eliminating the tax-determining interval, as is the practice in the administration of the personal income tax. Any one at all familiar with fiscal organization and administration will realize that such a shift would require changes at innumerable points other than in the procedure of assessment and tax collection.

Making the property tax a percentage tax would doubtless facilitate collection and reduce delinquency, once it were in working order. But as a matter of reform solely in the interest of better collection, such a shift would not be wise. On the other hand, if tax limitations continue to be adopted to restrict the tax rate below or on the stated limit; if new sources of revenue continue to be found; if state assumption of hitherto local functions and state equalization of educational and other hitherto local governmental costs are extended, the property tax will in effect be a percentage tax, and only in form an apportioned tax. To change the form to correspond to the real character would not then be very difficult. In such an event, the shortening, or the elimination, or the deferring of the final tax determination until after the initial tax payment would, it may be safely predicted, facilitate the collection and reduce the delinquency. But this condition is a long way from being realized.

II. INSTALMENT PAYMENTS

It seems hardly necessary to argue that property taxes should be paid or at least payable in instalments, rather than in one annual lump sum. But here again, the practice must be defended mostly on other and broader grounds and only to a small extent on the ground of preventing delinquency, although it will undoubtedly have the effect of collecting a larger percentage of the taxes levied. The only argument that can be made against instalment payments is the probability that the cost of

collection will be slightly increased, although it may be expected that the increased collections to be expected will more than overcome this loss. Some sort of estimate of the increased cost of instalment payments could probably be had from states permitting instalments, particularly from those which have recently made the change from an annual to an instalment basis. As far as the writer is aware, no such studies have been made, at least of an extended scope. This same may be said of the increases in the collections that might be expected from allowing instalments.

From the treasury point of view, aside from the increase in the collections to be expected, instalment payments smooth out the stream of revenue flowing into the treasury, and thereby tend to eliminate alternating heavy treasury balances and deficiency borrowing. They also tend to render the payment of the property tax less odious. At present, on this point, it suffers by comparison with sales taxes, in which the payment is concealed. From the taxpayer's point of view instalment payment would be desirable because of the deferment of the payment. The only class of taxpayers to whom lump-sum annual payment is advantageous is composed of those whose property-tax due date happens to coincide with the date of a relatively large receipt of disposable cash. For obvious reasons, this class must be small. In view of these undoubted net advantages of instalment payments, the fact that about one-half of the states still require payment once each year only, is strong evidence of inertia.

III. Penalties and Interest

It is obvious that taxes can not be collected without penalties in the present form of society. It is also obvious that these penalties may assume a great diversity of form, serving more or less effectively the purpose of compelling payment on or before the delinquent date. It may be, but rarely is, solely in the form of a flat rate on the amount delinquent, as 10% in Arkansas. This form may stimulate payment on or before the due date; but since the penalty does not increase after that date with continued non-payment, it must operate to encourage non-payment until just before the sale of the property for the tax. The penalty may be in the form of interest, beginning at the delinquency date, as in case of Arizona, Nebraska and New Hampshire, where the rate is 10% per annum, until the tax is paid or the property is sold. This form provides no special inducement to pay exactly on the due date, but does provide a continuing pressure to pay as soon as possible or convenient. The initial rate of interest may be changed as the delinquency period lengthens. And the flat penalty and the continuing interest may be combined into a great variety of forms. A similar effect may be had by allowing an abatement or a discount for prepayment or for payment before a specified date. Where instalment payments are permitted, the entire amount may become due and delinquent if the first instalment is not paid on or before the due date. The possibility for combinations may be imagined. The penalty system is apparently not identical in any two states.

What is not so obvious is the fact that, although penalties in some form and of some weight are inevitable, the particular level and form of the penalty does not seem to be a major factor in the efficiency of the collection system. The percentages of delinquency vary widely between localities within the same state and therefore subject to the same penalties. Whether very severe and involved systems of penalties stimulate tax payment materially is doubtful, but in many cases they certainly do not. If the owner is without funds and without credit, it makes very little difference what the penalties are. If the property is overassessed or if the value shrinks so that it seems the more desirable alternative to let the property "fly for taxes" rather than to pay the tax and continue the enjoyment of or income from the property, no amount of penalties will induce the payment of the tax. And it is probable that the overwhelming share of all delinquency is due to one or both of these causes.

It ought to follow therefore that the penalty system need not be very severe or very complicated. Yet there seems to be merit in providing not only an incentive to payment before the delinquent date but also a continuing inducement to payment after that date. This double requirement may be met by a combination of a moderate lump-sum penalty and a moderate rate of interest, both becoming applicable on the delinquent date. Such a system is exemplified by the Michigan system, with a slight variation, of a 4% penalty (collection fee) applicable on January 10, plus ¾ of 1% per month from March 1. A similar system is that of Wisconsin, in which state there is a 2% penalty as of February 1, and an interest of 1% per month, the maximum interest to be 8%. The effect of these combinations is to make the penalty (penalty and interest) regressive with the length of the delinquency, which seems proper. The variations in the penalty systems indicate that the philosophies on which the penalties are based are often at variance with the one just suggested.

The question may be raised as to the proper severity of both the penalty and the interest. It would be presumptious to set up rates for these figures to be applied throughout the country, for the rate of interest and other pertinent factors differ from state to state. The rates should be set with two principal considerations in mind: First, to hold the treasury reasonably undamaged from the delinquency, but not to derive revenue from a misfortune befalling its citizens-taxpayers; second, to provide an inducement adequate to stimulate taxpayers in funds or in credit to pay their taxes promptly rather than, in effect, to borrow money from the treasury, by deferring the tax payment. The level of the penalty and interest rates required by these two considerations will have to be found by experience. It seems that neither of these considerations, or both of them together, could have dictated some of the existing penalty systems. There seems, for example, to be no reason for Nevada's system which consists of the flat penalty of 15%, plus interest at the rate of 3% per month, both applicable to the amount unpaid on the delinquent date.

Whatever the form and level of the penalty scheme, one thing should be clear. The penalties will be ineffective if they are to be withdrawn, as they have been

during the depression of 1929, whenever the property tax becomes hard to pay. Some other method of giving relief to such as may be deserving thereof should be devised. A general withdrawal of penalties benefits deserving and undeserving alike, and damages both alike through the detriment to the public services, which the fiscal chaos of such remissions produce. It may be that the political pressure for relief in such cases is too strong for most legislatures to resist. If so, we have here an insoluble problem in property taxation. For hard times are, of all times, the times when the penalties ought to work. But this problem will be treated in another article of this volume.[2]

IV. Discounts

The practice of allowing discounts for prompt payment, for payment before a specified date, after the due date, or for prepayment before the due date was extended by some of the states as a result of the depression, since 1929. These ventures are mostly experimental; some of them were dictated by the emergency, and were probably unsound. The following types may be distinguished:

First, the local and optional discounts. In four of the New England states it is optional with the towns to order or to vote discounts within statutory limits. This form of discount is rare elsewhere; and its purposes are not obvious.

Second, in Kansas a 2% discount may be allowed on the second half of the tax if it is paid on or before December 20, the delinquency date for the first half. It is difficult to see the justification for this device. It is advantageous to the taxpayers with money, for whom the discount amounts to an absolutely safe and tax-free investment at 4% for six months. These taxpayers would not become delinquent anyway. As for the treasury, the effects are dubious. It is well that it has not spread far.

Third, in Florida, North Carolina, Oregon, and Utah a scheme of discounts for prepayment and prompt payment has been adopted, which, in so far as it is actually used, may advance the payments to a date much nearer the assessment date, and is so far to the good. In North Carolina, for example, the assessment day is April 1. Having completed the standard steps in the calendar, the taxes become due on the first Monday in October, and delinquent on the first day of February. If paid on or before November 1, a discount of 1% is allowed; if paid after November 1 and on or before December 1, the discount is only ½ of 1%; and payments made thereafter but not after the delinquent date are made at par. These discounts on payments made between the due date and the delinquent date are the customary discounts for "prompt" payment. They can be made in the exact amounts due, since the taxes have already been extended prior to the due date. But prepayments may be made on or before July 1, with a discount of 3%; and thereafter until the due date, with the discount declining by ½ of 1% for each month. The prepayments must be made in tentative amounts, since the exact rate and amount of the tax is not known at

[2] See Smith, *Recent Legislative Indulgences to Delinquent Taxpayers*, *infra*, 371, at p. 372.

that time. The results of this prepayment scheme are unknown to the writer of this article.* On the face of it, the scheme possesses possibilities, on the one hand, for spreading the payments over the year, and, on the other hand, for bunching them at points in the season inconvenient to the treasury, since both prepayment and "prompt" payment are optional with the taxpayers. This optional feature may be convenient to the taxpayers who wish to pay when they are in funds. It also, like the Kansas scheme, provides a safe, tax-free investment, in North Carolina at the rate of something less than 6%. The scheme invites the suggestion that it might be a transition to the practice of making payments tentatively with the return, as suggested above in this article, in other words, to the conversion of the property tax into a percentage tax.

* EDITOR'S NOTE: At Professor Jensen's suggestion, an inquiry was made with reference to North Carolina experience under its prepayment scheme. The following statement was obtained from Mr. Henry Brandis, Jr., Associate Director of the Institute of Government at Chapel Hill, North Carolina, who has been making a study of property taxation in this state.

"The reason for the discounts allowed prior to the due date in North Carolina is found in the fact that, while the due date is the first Monday in October, the fiscal year begins on July 1. The discount system is designed to bring in enough money to allow the counties and cities to operate during the first three months of the fiscal year without anticipatory borrowing with its potential deficit dangers. From the standpoint of the units themselves it certainly served a useful purpose as long as most of them (many being in default) could borrow nothing from the banks or could borrow only at 6%. Under present conditions many of our units either carry over enough cash or immediately collectible delinquent taxes to enable them to finance a large part of first quarter operations or can borrow money at far less than 6%. At least one of our soundest units has, for many years, budgeted enough each year to take care of the first three months of the next fiscal year. We still have a number of units which find the discount a desirable and even a necessary aid to first quarter financing; but those finding it expensive financing are beginning to doubt its merits, and it may well be that it will eventually be placed on a local option basis. Turning to its effect on tax delinquency, we can safely say: (1) that it has been chiefly used by large personal and corporate taxpayers who see in it, particularly under present conditions, an investment representing a certain and comparatively high return; (2) it obviously can be of no great help to that class of taxpayers who do not have money available before autumn and whose credit facilities are not great; and (3) it has not prevented tax delinquency, but, in view of the fact that in some industrial centers as high as a third of the total levy is sometimes collected prior to the due date, it must have some tendency to reduce tax delinquency by substituting a certainty for a possibility. In the main those who prepay could and would pay promptly otherwise. In its other aspects the discount system has: (1) been a minor complicating factor in the making of budgets; and (2) caused considerable bookkeeping trouble in cases in which the final tax rate varies from that estimated at the time the prepayment is made. This last factor varies greatly with the individual unit. In a number of cases the rate is estimated correctly, even as early as July 1. When it is originally estimated incorrectly the actual rate is usually known for some time prior to October 1. So far as most taxpayers are concerned valuations have already been finally fixed by July 1, and, while it is frequently troublesome to consult the valuation records, the valuation is seldom changed after the prepayment has been made."

A NEW PLAN FOR THE PRIVATE FINANCING OF DELINQUENT TAX PAYMENTS

Paul Studenski*

The municipalities of this country are slowly emerging from the financial difficulties in which they found themselves during the worst years of the depression. These difficulties have been due preëminently to three causes.

1. The severe drop in tax collections resulting from the inability of property owners, with incomes severely reduced by the depression, to pay their taxes on time.
2. The collapse of the money market during the first years of the depression and the inability of municipalities to obtain loans in anticipation of the collection of their taxes.
3. The fact that at the beginning of the depression there were outstanding against the municipalities large amounts of loans contracted by them against tax arrears, and that these loans have been maturing for payment.

The difficulties of the municipalities, in other words, have been due in no small measure (1) to the maintenance by them of defective systems of tax collection, under which large amounts of tax arrears were accumulating even during prosperous times, (2) to the prevalence of a tendency among them to borrow indiscriminately against all tax arrears without regard to their collectibility, and (3) to the common failure on their part to set up reserves against uncollectible taxes.

The Difficulties Confronting the Municipalities and Their Taxpayers under the Present System of Tax Collection

No municipality in this country collects all its taxes at the time they become due. There are always some taxpayers who fall behind in their payments. No small part of this delinquency is due to the fact that taxes are collected in a lump sum annually or semi-annually. The taxpayer usually accumulates from his monthly rents or income the amount required for his taxes. If he fails to do so, or if, after having accumulated the money, he spends it for some other purpose, he is often unable to make this lump-sum payment.

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In most instances such taxpayers cannot obtain loans from banks for the payment of their taxes. Since loans of this nature are a subordinate claim against the taxpayer's property, they are not considered by the banks to be a good risk. Only where the personal credit of the taxpayer with the bank is especially good or where the bank happens to be a mortgagee of the property will the bank lend money to the taxpayer for the payment of taxes. In the latter case, the bank can add the loan to the amount of the mortgage, thus making the loan nearly as secure as the original mortgage.

It may take a delinquent taxpayer several months to accumulate the money with which to liquidate his arrears and the penalties thereon. By the time the taxpayer pays these arrears, however, another tax payment often becomes due and thus he is forced again to default. Delinquency tends to become recurrent or perpetual. Taxes are increased through penalties sometimes twenty per cent, or more.

The finances of a municipality are affected adversely through borrowing when the municipality fails to collect all the taxes at the time when they become due. It is true that the municipality eventually will collect nearly all the taxes it has levied. Taxes are ultimately paid because of

1. The heavy penalties for delinquency which, for example, amount to ten per cent per annum in New York City, and run as high as eighteen per cent in some places in the State of New York, and
2. The fact that the municipality may exercise its right of selling the tax lien against the property or even the property itself to any private bidder.

In New York City, for example, ordinarily only a little over one per cent of taxes are still uncollected after the expiration of three years and are then offered as tax liens for sale. Less than one per cent of the levy becomes uncollectible and has to be written off the city's books. While taxes are in arrears, however, it becomes necessary for the municipality to make up somehow for the shortage in its revenue. Ordinarily, it does that by borrowing from the banks.

By thus allowing the taxpayers time within which to pay the taxes (three years in New York City, as already noted) before resorting to the drastic measure of a tax sale, and by borrowing from the banks against tax arrears, the municipality really extends credit to the taxpayers, while it itself borrows the necessary cash from the banks. It must repay its loans promptly, even though it may not collect the taxpayers' debts during the term of the loan. Political considerations may compel the municipality to be lenient with its tax debtors, even though it may not be able to obtain this same degree of leniency from the financial institutions that extend credit to it against its tax arrears. This system of financing tax arrears has substantial disadvantages from the city's point of view.

The disadvantages from the city's point of view become especially apparent in times of a depression when tax arrears increase and when the money market tightens. The municipality is compelled at such times to extend credit to many more taxpayers and it must do so in each case for a much longer time than in ordinary times. Yet,

it cannot obtain as much credit in the money market as it did when money was freer and when its tax collections were good. Municipal credit is founded, in the last analysis, upon the ability of the taxpayers to make prompt payments. If taxes are not paid promptly, municipal credit grows weak. Under such conditions, loans cannot be obtained and tax arrears cannot be converted into cash. Both taxpayers and the municipality suffer under this arrangement. Under this awkward system, the municipality endeavors to finance the taxpayers from whom its own funds are supposed to be derived, and becomes involved in a vicious circle. It is unable to convert its tax arrears into cash because of the weakness of its credit, and conversely, it suffers from a weakness of credit because of its inability to convert its tax arrears into cash.

The New Tax Finance Plan for the Establishment of a Special Type of Credit Instrument and Credit Institution for the Benefit of the Taxpayers

The necessity for the extension of credit to taxpayers by municipalities would be eliminated, and the credit of the municipalities would be greatly strengthened if the taxpayers themselves were enabled to borrow funds for the payment of their taxes from private sources. This may be accomplished (1) by the establishment of a new type of private credit institution for the accommodation of these taxpayers; and (2) by the creation of a new form of commercial or mortgage paper, indirectly founded upon the tax lien as it exists under the present law.

A plan of this sort was evolved by Mr. B. G. Orlove, Jr. of New York City and is embodied in Chapter 345 of the Laws of New York of 1935.[1] Steps are under way to bring about its effectuation in New York City. The proposal involves the establishment of one or more private finance corporations to lend funds for tax payments under the provisions of the aforementioned law.

The purpose of such a lending corporation will be limited by charter to the advancement of funds to property owners or parties having an interest in property for delinquent and for current taxes. Normally loans may be extended by this lending corporation to taxpayers for periods of twelve months. These loans may be made payable by means of twelve notes of equal amount maturing monthly. The lending corporation will be limited in its charges to four per cent interest per annum on the unpaid balances and to a service charge of two per cent of the amount of the loan. It is provided, however, that after default, the legal rate of six per cent may be charged on sums actually in default.

On a year's loan of $12,000 for tax arrearages payable in monthly instalments the charges would amount to $260 in interest and $240 in service charges. On a year's

[1] The plan was elaborated on the legal side by Abraham J. Isserman of the New Jersey Bar. The author of this article collaborated in the formulation of the plan, the New York State Tax Commission and New York City Department of Finance rendered material assistance in furthering it. The text of the law incorporating the main features of the plan is appended. See p. 369, *infra*.

loan of $12,000 granted under the same terms for the payment of current taxes the charges for interest and service would total only $320, because the charges would be reduced by the four per cent discount allowed by the city for advance payment of the second semi-annual instalment of the tax. In this case the city would benefit by obtaining the full year's taxes at the time the first instalment is due. The taxpayer would benefit by actually spreading his payments over the entire year.

To assure repayment of the loan extended by the lending corporation to the taxpayer, the corporation would receive an interest in the tax lien which the city is holding against the property. A very simple way of providing this security would be to empower the municipal corporation to accept payment from the lending corporation upon request from the taxpayer. The municipal corporation would be empowered to acknowledge payment by means of a special receipt to be known as a "conditional tax receipt."

The essence of this "conditional tax receipt," is that the tax lien remains in force until the "conditional tax receipt" is surrendered to the city tax collector for cancellation. Upon surrender and cancellation of the "conditional tax receipt" the municipality will issue the final receipted tax bill, extinguishing the tax lien against the property for the amount and period covered in the cancelled "conditional tax receipt."

The default by the borrower to the lending corporation does not change the status of the tax lien in any way. The procedure now provided for by law for the sale of tax liens or properties for non-payment of taxes, will in all cases remain unchanged as if the "conditional tax receipt" had not been issued. However, a municipality availing itself of the plan may hold no such sale in the case of taxes covered by a conditional receipt, before expiration of one year from date of the issuance of such conditional receipt, nor later than three years from such date. For the purposes of this sale the existence of a "conditional tax receipt" outstanding against the property will not be deemed payment of the taxes.

Out of the proceeds of the tax lien sale, however, the municipal corporation is required to pay to the lending corporation, upon the surrender of the "conditional tax receipt," the amount actually due to the lending corporation on its loan contract with the borrower. The municipality retains for its own uses any excess over that amount.

The "conditional tax receipt" received from the municipality must be deposited by the lending corporation with a banking institution as trustee. The trustee will collect for the account of the lending corporation the payments due on the loan contract and credit such payments on the "conditional tax receipt."

The books of the lending corporation will be subject to examination by duly accredited auditors of any municipality which has issued "conditional tax receipts" to it. The municipal corporations are authorized to make further regulations for the protection of the taxpayers who may finance their tax bills through this plan.

The Advantages of the New Plan

The paper created by the lending corporation will have great liquidity, security, and marketability. It will have these qualities (1) because of the regular monthly payments of the loans it represents; (2) because its actual underlying security is an unliquidated tax lien, which is a claim prior to any existing or future mortgages; and (3) because the loans it represents will ordinarily constitute only 2½ to 5 per cent of the value of the property against which it is issued.

The paper is a first lien against real estate; therefore it will be an eligible investment for savings banks, insurance companies and trust funds. When endorsed by the lending corporation it will be a desirable investment for commercial banks and also for dealers in bankers' acceptances and commercial notes.

Inasmuch as there is available now, as a result of the business depression, a great excess of cash in banks for credit expansion, and, inasmuch as the federal government is using every means at its disposal to induce the banks to make these reserves available for the extension of legitimate credits, there will be no difficulty in finding a market for this paper. The banks and other institutions should eagerly take up the taxpayers' notes endorsed by the lending corporation with "conditional tax receipts" attached thereto. They should also liberally buy of the lending corporation's direct obligations which will be secured by the taxpayers' notes ("conditional tax receipts" attached) and by the assets of the corporation. It is high time that a paper be offered to the market that would possess the security with which even the most discriminating investor would not be able to find fault.

The appearance of this prime paper at this time would be especially propitious as it would convert a certain class of troublesome debts and inactive assets into live, circulating media. It would give employment to funds now lying idle in banks and direct their flow into the coffers of the municipalities where they may be used for public good.

The plan proposed here would permit an almost complete elimination of delinquencies in the payment of taxes and would supply the municipality with nearly all the taxes at the time when they become due. The municipality would then be in an excellent position to demand a full payment of the tax inasmuch as the taxpayer would have no legitimate excuse for not paying his tax. He would always be in a position to obtain financing for his tax bill. The only exceptions would occur in those rare cases in which the amount of taxes and arrears closely approach the market value of the property.

Manifestly, if the tax levies would be made sufficient to cover the municipality's expenditures and, if at the same time, the tax collections of the municipality would be improved as envisaged by the Orlove plan, the municipality's credit would be greatly enhanced. The municipality would be able to borrow large amounts for capital outlays at low rates of interest, at a time when these outlays can be made advantageously and economically. This would help the revival of business. There

would also be an incidental gain to the thousands of holders of municipal bonds (both individuals and institutions) through the improved marketability and appreciation in the price of the municipality's obligations.

The taxpayer would gain through the convenience of monthly payments of his taxes, through the avoidance of the penalty of 10 per cent or more because of tax delinquency, by the fact that his tax debt has been funded, and by the fact that the conditional payment of his tax will generally be regarded by the mortgagees as a mere technical default. As long as the taxpayer promptly meets his payments to the lending corporation, thus automatically liquidating the taxes against his property, the mortgagee will be satisfied.

The introduction recently in several states of the system of quarterly collection of taxes will undoubtedly reduce somewhat tax delinquency and to that extent may diminish the need for the adoption of this plan. But it will not eliminate the need for it altogether. So long as tax delinquencies occur, the need for such a plan of financing them will continue.

To summarize, the benefits of the plan to the various parties would be as follows:

1. To the municipality:
   (a) the immediate conversion of its frozen tax arrears into cash without any cost to it;
   (b) a considerably improved liquidity of its income;
   (c) an improvement in its credit standing.
2. To the taxpayers:
   (a) substitution of instalment payments for payments in lump sums;
   (b) avoidance of penalties of ten per cent or more for delinquency;
   (c) relative protection against foreclosure because of tax default.
3. To the mortgagees:
   the orderly and easy liquidation by the property owner of a prior lien against the mortgages with the avoidance of heavy penalty accruals.
4. To the holders of municipal obligations:
   the appreciation in the price of bonds and the improvement in their marketability.
5. To the country at large:
   the creation of a new credit investment and the utilization of a part of the unused credit resources of the country for a new and productive purpose.

Reforms With Which the Tax Finance Plan Is Linked

State and municipalities desiring to avail themselves of the tax finance plan will find it also necessary so to reorganize their procedures for the collection of taxes and disposition of tax liens as to insure to the purchasers of tax liens clear titles and a fair, effective, and inexpensive procedure of lien foreclosure. Otherwise the liens will not be purchased, delinquencies will remain unliquidated, and it will not be safe for lending companies to extend the desired facilities in these jurisdictions.

In the second place, it will be necessary for such states and municipalities to set up adequate reserves against uncollectible taxes, if they have not already done so.

It will be necessary for them to do it in order that their collections may equal their cash requirements and also that the lending companies may safely lend money to their taxpayers.

Since the uncollectible taxes are represented really by the tax liens which can not be converted into cash because there are no purchasers for them, the amounts which the city should appropriate each year to the reserves may be measured by the amounts of tax liens remaining undisposed each year. In other words, the appropriation may be fixed at the amount of tax liens offered for sale during the preceding year, but remaining undisposed at the end of the year, less the amount of the tax liens offered for sale during previous years but disposed of only during the preceding year. If a municipality makes such appropriations and raises the amounts of its tax levies correspondingly, it will be collecting enough money annually to meet its current budgetary requirements and will be operating on a cash basis.

A municipality maintaining such a reserve against uncollectible taxes as described, would be able in bidding in tax liens remaining unsold, actually to transfer cash from the reserve fund to the general fund, thus making the cash available for current expenditures and covering the deficits in its current tax collections. Whereever a conditional tax receipt is outstanding against a tax lien so bid in by the municipality, the municipality would have to reimburse the lending company holding such a receipt for the amount owed to it thereupon by the taxpayer, since the municipality had received from the lending company originally the full amount of the tax. Otherwise the municipality would be getting both the tax and the property, and would be appropriating to itself the money belonging to the company.

Where the penalties collected on delinquent taxes and the discounts allowed for the prepayment of taxes are substantial, they should be taken into account in the determination of the amount to be appropriated to the reserves. The penalties collected during the preceding year should be deducted from the amount otherwise required to be appropriated, since they represent a gain in revenue. The discounts allowed during the preceding year should be deducted from such amount, since they represent a loss in revenue.

A reserve constituted in this manner would be the least that a municipality desiring to be solvent would have to maintain. It will take care of the annual deficits in tax collections. But it will not take care of the accumulated deficits therein. To take care of them a more substantial reserve amounting to, say, 25 or 30 per cent of the tax levy would have to be created. Such a reserve may be accumulated over a period of, say, 15 years with the aid of a special annual appropriation of 1½ or 2 per cent of the levy. The reserve should be invested in the short term paper issued by the city in anticipation of the collection of taxes and liquidation of tax liens so that it would no longer be necessary for the city to borrow in the money market the funds represented by the accumulated tax delinquency.

Finally, to complete the reform of its system of tax collection, a municipality

should also synchronize its tax collection dates and expenditure periods. It should reduce and, eventually, do away completely with, its recurrent tax anticipation borrowing. How this may be accomplished is a separate problem which need not be discussed here.[2]

Thus, the Orlove tax finance plan is intimately linked up with a whole set of measures for the improvement of tax collections. It occupies a distinct place in a program of reform of municipal finance.

APPENDIX

NEW YORK LAWS, 1935, CHAPTER 345

AN ACT to amend the tax law, in relation to the issuance of conditional tax receipts

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Sections ninety-seven, ninety-seven-a, ninety-seven-b, ninety-seven-c and ninety-seven-d of chapter sixty-two of the laws of nineteen hundred nine, entitled "An act in relation to taxation, constituting chapter sixty of the consolidated laws," as added by chapter five hundred and ninety-six of the laws of nineteen hundred thirty-four, is hereby amended to read as follows:

§ 97. *Payments of taxes from loan corporations.* Any municipal corporation may as hereinafter provided accept payment for taxes on real estate, water rates or special assessments from any corporation organized under the laws of the state of New York for the purpose of extending loans to taxpayers for the payment of taxes and may as hereinafter provided issue therefor a conditional tax receipt. Such payment shall be conditionally credited by the municipal corporation against the taxes due on the specific property for which payment is made, but shall not extinguish the tax lien existing against said property by reason of said taxes, until the conditional tax receipt endorsed as paid is surrendered for cancellation to the municipal corporation. Such payments may be used by the municipal corporation in the same manner as if they were made by the taxpayer directly.

§ 97-a. *Limitations.* Municipal corporations may accept such payments from corporations extending loans for such purpose provided that such lending corporation shall have a minimum paid up capital of at least one million dollars and shall charge not more than four per centum interest on unpaid balances on moneys loaned, nor more than two per centum of the amount of the loan as a service charge for making said loan; provided, however, that in the event of a default in the payment of such a loan the lending corporation may charge six per centum interest per annum on all sums in default; and provided furthermore, that the lending corporation shall deposit the conditional tax receipt within three days after receiving the same with a banking institution, trust company, state bank, national bank, or federal reserve bank of the district in which the municipal corporation is located.

§ 97-b. *Deposit and delivery of conditional tax receipts.* Immediately upon the execution of the loan contract between the borrowing taxpayer and the lending corporation the said lending corporation shall pay to the municipal corporation the moneys provided for therein. The borrowing taxpayer shall make payments on said loan to the banking institution with which the conditional tax receipt shall have been deposited for the account of the lending corporation. Such payments when made shall be entered and acknowledged

[2] See the author's article, *Temporary Borrowings in Anticipation of Tax Collections* (May, 1933) THE COMPTROLLER (organ of the National Association of Municipal Financial Officers).

by the banking institution upon the conditional tax receipt, and said conditional tax receipt shall remain in the possession of the said banking institution until the loan is fully discharged, or until there occurs a default. In the event the loan is fully discharged the conditional tax receipt endorsed as paid, shall be delivered to the borrowing taxpayer or person making the payment. In the event of default the conditional tax receipt shall be returned to the lending corporation at its option.

§ 97-c. *Surrender of conditional tax receipt and issue of tax bill.* Upon the surrender to the municipal corporation of the conditional tax receipt evidencing the discharge of the obligation created by the loan contract in connection with which the said conditional tax receipt was issued, the municipal corporation shall issue in lieu thereof a receipted tax bill. Such receipted tax bill shall bear the date of the conditional tax receipt and no interest and/or penalty shall be charged to the taxpayer for the period intervening between the date of the issuance of said conditional tax receipt and the date of its surrender; but until such receipted tax bill shall be issued all penalties and/or interest imposed by the municipal corporation for tax default shall be added to the tax lien until the discharge of the obligation created by the loan contract in connection with which the said conditional tax receipt was issued, and such penalties and/or interest shall be cancelled and be deemed satisfied upon the discharge of such obligation provided such obligation is discharged prior to the disposition of the tax lien as provided in section ninety-seven-d of this article. If subsequent to the issuance of the conditional tax receipt and independently of the payment by the lending corporation to the municipal corporation of the taxes covered by the conditional tax receipt, payment of said taxes shall be made by any person directly to the municipality in order to obtain a receipted tax bill, the lending corporation shall forthwith be repaid by the municipal corporation from such payment the balance due to it on the loan contract and it shall thereupon surrender to the municipal corporation the conditional tax receipt.

§ 97-d. *Tax sales.* Notwithstanding the issuance of a conditional tax receipt as provided by this act, the procedure now provided for by law for the sale or offering for sale of tax liens or properties for non-payment of taxes shall in all cases remain unchanged as if the conditional tax receipt had not been issued, provided, however that such sale or offering for sale shall not be held before the expiration of one year from the date of the issuance of any conditional tax receipt, but must be held within three years from said date, nothwithstanding the provision of any general or special law or charter provision to the contrary. Prior to said sale or offering for sale however, the lending corporation shall be required to exhibit to the municipal authority having jurisdiction over the sale of tax liens or properties the conditional tax receipt showing payments made on account of the loan contract, if any, which payments shall be credited against the amount due for taxes against the property to be sold which credit shall be given as of the date of the conditional tax receipt. The municipal corporation receiving the proceeds of the tax sale shall forthwith pay out of said proceeds the amount due to the lending corporation on the loan contract in connection with which the conditional tax receipt was issued and the said conditional tax receipt shall be surrendered by the lending corporation upon receipt of said payment. Until payment from the proceeds of the sale has been made to the lending corporation or a receipted tax bill has been issued in exchange for the conditional tax receipt the lending corporation or its assigns, shall have an interest in and lien upon the tax lien or properties to the extent of the unliquidated portion of its loan; and the municipal corporation shall hold such interest and lien for the account of the lending corporation subject to the provisions of this article.

§ 2. This act shall take effect immediately.

RECENT LEGISLATIVE INDULGENCES TO DELINQUENT TAXPAYERS

WADE S. SMITH*

Tax authorities have been nearly unanimous in asserting that prompt and vigorous enforcement is the very heart of tax collection. Heretofore, legislators have recognized that taxes are paid only under compulsion, and have buttressed the tax laws of their states with provisions calculated to make prompt payment the easiest, and safest, course for the taxpayer. But the spectacle accompanying the past few years' high property tax delinquency[1] has been that of a wild legislative scramble to remove compulsion in fact, if not in the letter of the law. There has been a mass of indulgences undermining the morale of the taxpayer who pays promptly while extending to delinquents, without distinction as to their real needs, every opportunity to continue delinquent under the pleasantest circumstances which can be devised.

Only three states, Rhode Island, Vermont, and Delaware, have failed to join in the procession. In the other 45 states tax moratoria, in mild or drastic form, have been enacted. As might be expected, New England has seen the fewest legislative concessions to tax delinquents, probably because here the tradition of strict enforcement has been strongest. Elsewhere throughout the nation states have responded to high current and accumulated delinquencies with laws marked by the utmost generosity.

The indulgences granted have ranged from minor extensions of the date delinquency begins, through easy payment plans, to actual compromise of the amount due. By far the most important have been those laws permitting the delinquent to amortize his arrearages over a period of one or more years, sale of the tax lien being stayed in the meantime, and those laws making adjustments in the period and terms of redemption after sale of the lien but before title is issued. But blanket moratoria on tax sales and foreclosures, indiscriminate penalty reductions, and miscellaneous

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[1] Current tax delinquency probably reached its peak during 1932-33, when about one fifth of the levies due and collectible were unpaid. In some sections accumulated delinquencies on many properties exceeded assessed valuations. For a thorough discussion of the extent and distribution of tax delinquency, see CURRENT TAX DELINQUENCY (Dept. of Commerce, Bureau of the Census, Division of Real Property Taxation, Washington, 1934) Pts. I and II.

concessions bearing little or no relation to the condition of the individual taxpayer, have been enacted in plenty.[2]

It is of course necessary to recognize that this has been emergency legislation. However unwise much of it may be, it was passed by legislatures which believed it necessary to avert economic (or political) catastrophe. Further, in the face of the necessity for making concessions, there was little precedent to guide legislators as to their form. Theoretical objections to certain moratoria had little weight in states in which lax enforcement procedures have been the rule rather than the exception, and where the tax collection laws have never provided anything approaching a real system of tax collection. Where taxes have been collected in normal times more by the sufferance of the taxpayer than by the authority of government, it is not surprising that in time of emergency the palliative has been sugar-coated.

The state[3] tax collection moratoria fall more or less regularly into groups: laws extending the original due date, laws extending the date the penalty attaches, laws reducing the amount of the penalty or interest or both, laws postponing tax sales, laws authorizing instalment payment of back taxes, laws adjusting the date and terms of redemption after sale but prior to foreclosure, laws altering the terms of foreclosure, and laws compromising the amount due.

Thirteen states have either arbitrarily extended the due date or authorized local collection authorities to do so. They are Massachusetts, New York, Illinois, Wisconsin, Iowa, Nebraska, West Virginia, North Carolina, Florida, Mississippi, Arkansas, Louisiana, and California. Several other states have adjusted the due date to fit new instalment methods of paying current taxes, but such changes can hardly be considered as moratoria. The majority of the extensions were for relatively short periods, as from the first to the fifteenth of a month, or for three or six month periods. Some states renewed the extensions.

Adjustments in the date or amount of penalty for late payment have been made by all except New Hampshire, Rhode Island, Vermont, Delaware, and Alabama. Many of the changes have been minor, either slight extensions of the date, or fractional reductions in the penalty or interest rate. And many of the concessions have

[2] Tax authorities are pretty well agreed that, ideally, the tax should be payable in the first instance like any other bill—in ten to thirty days. The penalty should begin at once and exceed the normal rate of interest. Sale of the lien should occur within a year of the date tax was due (to insure the levying unit use of the funds for the year in which levied), and not more than two years should elapse after sale until absolute title is vested in the purchaser. Enforcement should be prompt and inflexible. See *Report of the Committee on a Model Tax Collection Law of the National Municipal League* (1935) 24 NAT. MUN. REV. No. 5 (Supp.).

[3] Only state legislation is considered here. However, many indulgences have been granted by city ordinance or city charger amendment, among the latter being Detroit's famous seven year payment plan which, together with a refunding plan, virtually rehabilitated that city's finances. The municipal action has been generally more restrained than that of the state legislatures, and tended to distinguish between taxpayers on the basis of causes of delinquency, probably because most of the municipal plans have been devised by city treasurers and tax collectors in close touch with the exact local situation and therefore have a closer relation to the facts of delinquency in each instance.

been more apparent than real, inasmuch as remissions of penalties have frequently been conditioned on prompt payment of current taxes.

Thus, Pennsylvania abated interest and penalty on 1933 and prior taxes due first class cities if the delinquent arrearage was paid in four equal annual instalments and current taxes were paid when due.[4] A similar concession was granted to delinquents of all other units for 1934 and prior if 20 per cent of the arrearage was paid by November 1, 1935, and 20 per cent each November 1st until 1939.[5] In both instances default on the payments restored the lien to its former status, and taxes for which liens had been sold to private individuals were not eligible.

Indiana provided that taxes of 1931 and later, delinquent on January 1, 1935, might be paid up to November 1, 1935, without penalty or interest other than that accrued on January 1, 1935. After that date the previous penalty was displaced by a total penalty of 10 per cent added to the tax.[6] The penalty on special assessments paid within a year was also waived.[7]

Wisconsin granted considerable local option in regard to both amount of penalty and the date at which it should attach, by providing[8] that by two-thirds vote the local governing body of a town, village, or second, third, or fourth class city might extend the date without penalty; first class cities were given a comparable option.[9] Another law[10] authorized the governing bodies to postpone 1934 taxes due March 22, 1935, to July 1st, 1935, and 1935 taxes to the corresponding date, if the taxpayer filed an application for such extension. This law was later amended[11] to give the extension whether application were filed or not. Nebraska attempted a drastic long-term postponement in penalty dates[12] only to have the law declared unconstitutional.

Kansas[13] authorized county treasurers to refund all penalties, interest, costs, and expenses paid by persons who between January 1, 1935, and February 25, 1935, redeemed land previously sold for taxes to the county. Virginia authorized her local governing bodies to release taxes for 1935 and prior years from penalty, interest and costs, under prescribed conditions[14] and provided also[15] that the release should be conditional upon payment within six months of the effective date of the act (January 16, 1936).

Texas released all penalties and interest on taxes delinquent on August 1, 1934, if paid on or before March 15, 1935, and in the same act declared it to be the policy of the legislature to grant no further penalty, interest, or cost concessions after June

[4] Pa. Laws 1935, Act 75, as am'd by Act 180. Examples given are from legislation enacted during 1935 and 1936, as being typical of those adopted earlier and having the added virtue of being more recent. Local or special laws, in which several states, notably South Carolina, indulged, are not discussed, since they follow the general pattern. Neither is any attempt made to unscramble the ramifications of Illinois law relating to Cook County (Chicago).

[5] *Id.*, Act 52, as am'd by Act 180.

[6] Ind. Laws 1935, c. 166.

[7] *Id.*, c. 317.

[8] Wis. Laws 1935, c. 2.

[9] *Id.*, c. 128.

[10] *Id.*, c. 7.

[11] *Id.*, c. 209.

[12] Neb. Laws 1935, c. 156.

[13] Kan. Laws 1935, c. 308.

[14] Va. Laws 1935, c. 55.

[15] Va. Laws 1936, c. 392.

30, 1935.[16] Idaho cancelled penalties and interest in excess of the 2 per cent flat penalty added at time of delinquency, on all irrigation district assessments for 1928-1933 inclusive.[17] Washington remitted penalties and interest on 1932 and prior delinquencies if at least one half of the taxes due for any one of the years was paid before March 30, 1935, provided no judgment had been entered or certificate issued to other than the county.[18]

Twenty-three states altered the date of the tax sale to give additional time to the tax delinquent. They were New Hampshire, New York, Pennsylvania, Ohio, Indiana, Michigan, Wisconsin, Minnesota, Iowa, Virginia, West Virginia, North Carolina, Georgia, Florida, Mississippi, Louisiana, Montana, Wyoming, Colorado, New Mexico, Arizona, Utah, and Nevada. Extensions ranged from a few months up, there being several stays of sales for a period of several years or more.

Typical of the shorter extensions was that of New Hampshire[19] which extended the lien from July 1 to October 1 during 1935 and 1936, this being, incidentally, the only moratorium passed by this state. New York stayed sale of property on which back taxes were being paid in instalments,[20] and Pennsylvania placed authority for delaying tax sales in the courts. Up to March 31, 1937, the court of common pleas may stay a sale,[21] and the county courts on petition of the county commissioners may adjourn a sale from time to time, but not later than May 1, 1937.[22] Indiana stayed sales during 1935 on lands delinquent December, 1934. If taxes of 1934 payable in 1935 were paid when due, no such lands were to be offered for sale during 1935, either. Special assessments were not included in the stay.[23]

Twenty-five states authorized instalment payment of back taxes, under amortization plans spreading payments over from one to ten years. They were Massachusetts, New Jersey, Pennsylvania, Ohio, Indiana, Illinois, Michigan, Wisconsin, Minnesota, South Dakota, Maryland, Virginia, South Carolina, Florida, Alabama, Arkansas, Louisiana, Oklahoma, Montana, Idaho, Arizona, Utah, Washington, and Oregon. Specific provision was usually made that default in any payment restored the lien to its former status, and interest and penalty concessions were made in most instances. Many of the laws set forth payment conditions in detail, but a few merely conferred authority upon local units to accept instalment payments.

New Jersey permitted taxes and assessments, plus penalty and interest charges, to be spread over five years in monthly or quarterly instalments bearing 7 per cent interest, provided 1935 taxes were paid when due.[24] Indiana permitted payment of delinquent taxes in 16 equal semi-annual instalments bearing 4 per cent interest, the first instalment due in May, 1936, and current taxes to be paid at the same time.[25] Michigan permitted 1931 and prior taxes to be paid in ten equal annual instal-

[16] Tex. Laws 1935, H. C. R. 13.
[17] Idaho Laws 1935, c. 2, as am'd by c. 93.
[18] Wash. Laws 1935, c. 166.
[19] N. H. Laws 1935, c. 19.
[20] N. Y. Laws 1935, c. 725.
[21] Pa. Laws 1935, Act 6.
[22] *Id.*, Act 1, as am'd by Act 390.
[23] Ind. Laws 1936, c. 4.
[24] N. J. Laws 1935, c. 42.
[25] Ind. Laws 1935, c. 166.

ments,[26] the 1935 legislature extending the period to include 1932 taxes. Maryland authorized local units to accept instalment payment of arrears over a five year period, and by resolution abate penalties and interest accruing during the period.[27] One of the more complicated systems, adopted in Illinois,[28] was declared unconstitutional by the courts. This provided for the spread of delinquent taxes for 1932 and prior years in seven annual instalments beginning August 1, 1935, penalty and interest to be remitted but interest at 6 per cent to be paid. On April 17, 1936, the Illinois Supreme Court affirmed a decision of the lower courts holding this law inconsistent with Section 22, Article 4, of the state constitution, prohibiting special legislation.[29]

Alterations in redemption periods and terms were made by thirty-four states, or by all except New Hampshire, Vermont, Rhode Island, Connecticut, New Jersey, Ohio, Indiana, Missouri, Nebraska, Delaware, Maryland, Virginia, Oklahoma, and Colorado. They ranged from a reduction in the penalties or other charges to be paid by the owner to redeem his property from the purchaser of the tax lien, to extensions of the time within which such payment could be made.

Massachusetts[30] permitted a taxpayer to secure an extension of the lien for one year by paying not less than 25 per cent of the original amount due, but prohibited any extension beyond the one year. Interest in an order for the abatement of a lien was reduced from 6 to 5 per cent.[31] Pennsylvania[32] provided that if the lien were purchased by the county, it could be redeemed at any time if all taxes, interest, and costs were paid. Penalties were waived. The regular penalty for redemption was reduced from 25 to 15 per cent.[33] Pennsylvania [34] and Massachusetts[35] both permitted partial redemption.

Illinois permitted a home owner to offer payment for all arrears, whereupon the court might waive any and all accrued interest and penalties added after foreclosure.[36] Another Illinois statute[37] providing that lands forfeited to the state for 1929-33 delinquencies might be released by paying taxes due plus costs with 5 per cent interest in lieu of other penalty and interest, was ruled unconstitutional by the state attorney general.[38] Minnesota[39] provided that any taxpayer with delinquencies for 1933 and prior, to which 1934 taxes had attached on January 1, 1936, might appear before the clerk of the district court and confess to a judgment for the total due, and thereafter pay the total, plus costs, waiving interest and penalty, in ten equal annual instalments, the privilege to be available before the court until November 1, 1937.

West Virginia extended to December 31, 1935, the time for redeeming forfeited lands without payment of interest or costs, if payment were made by that date of

[26] Mich. Laws 1933, Act 126.
[27] Md. Laws 1935, c. 387.
[28] Ill. Laws 1935, H. B. 783.
[29] People *ex rel.* Clarke v. Jarecki, 1 N. E. (2d) 855 (Ill. 1936).
[30] Mass. Laws 1935, c. 414.
[31] *Id.*, c. 218.
[32] Pa. Laws 1935, Act 356.
[33] *Id.*, Act 241.
[34] *Id.*, Act 138.
[35] Mass. Laws 1935, c. 354.
[36] Ill. Laws 1935, H. B. 204.
[37] *Id.* H. B. 568.
[38] Opinion to the Governor, June 18, 1935.
[39] Minn. Laws 1935-36, c. 72.

taxes levied and all taxes which would have been levied had there been no foreclosure.[40] Partial redemption by the holder was also permitted[41]

Twelve states granted concessions in regard to the date of foreclosure and issuance of the deed to the property. They were Massachusetts, New York, Wisconsin, North Dakota, Kansas, North Carolina, Florida, Tennessee, New Mexico, Arizona, Utah, and Washington. Most changes were minor. North Dakota suspended the issuance of tax deeds until December 31, 1937.[42] North Carolina authorized a general extension of foreclosures.[43] The other stays were of the same pattern.

Ten states passed measures compromising the total amount due. All of them are worth noting briefly.

Connecticut[44] provided that on application and plea of inability to pay, and with the approval of the state tax commission and the attorney general, the real and personal property taxes of a corporation may be wholly or partially abated by a municipality, if necessary to render the corporation eligible for a federal loan. New Jersey[45] authorized municipalities, except in first class counties, to abate, review, and adjust past due taxes and assessments of corporations under the jurisdiction of bankruptcy receivers. Consent of the state tax commission is necessary. Idaho[46] authorized the county commissioners to cancel or adjust irrigation district taxes if necessary to render the property owner eligible for federal aid.

New York[47] and Florida[48] established special boards to compromise past-due taxes. New York authorized creation of county, town, or village tax arrears boards, to examine property under liens acquired prior to January 1, 1935, and, if the total taxes, assessments, and water rates exceeded the assessed valuation, determine the amount to be paid. The Florida law created a Delinquent Tax Adjustment Board in each county to compromise the delinquent state and county real property taxes for 1935 and prior, while a companion law[49] created similar bodies for cities. Both laws were contested.[50] Another law[51] gave adjustment powers to the county commissioners, while another[52] granted similar powers with respect to delinquent drainage district taxes where the total outstanding arrearage exceeded the total debt requirements of the district. Oregon[53] authorized the county boards to adjust and settle tax collection claims against lands the chief value of which was green timber damaged by fire.

Outright cancellation of unpaid taxes was offered by four states. Minnesota[54] cancelled school district taxes prior to 1935 and unpaid for five years or more, when the liens had been acquired by the district. North Dakota[55] cancelled unpaid per-

[40] W. Va. Laws 1935, c. 54. [41] *Id.*, c. 91. [42] N. D. Laws 1935, c. 277.
[43] N. C. Laws 1935, c. 313. [44] Conn. Laws 1935, c. 63. [45] N. J. Laws 1935, c. 119.
[46] Idaho Laws 1935, 1st Spec. Sess., c. 42. [47] N. Y. Laws 1935, c. 799.
[48] Fla. Laws 1935, c. 17406. [49] *Id.*, c. 17405.
[50] In Richey v. Wells, 166 So. 817 (Fla. 1936), the state Supreme Court held the county act unconstitutional. It divided evenly on the validity of the city act in City of Marianna v. Davis (unreported as yet), dismissing a motion for a permanent injunction against the city.
[51] Fla. Laws 1935, c. 16910. [52] *Id.*, c. 17458. [53] Ore. Laws 1935, c. 367.
[54] Minn. Laws 1935, c. 60. [55] N. D. Laws 1935, c. 272.

sonal property taxes together with interest, penalty, and costs, conditional on payment before January 1, 1935, of a sliding per centage of the tax, dependent upon the age of the lien. Texas barred collection of taxes delinquent prior to December 31, 1919, and amended the constitution to give the legislature power to remit taxes delinquent for ten years.[56] Illinois[57] provided that no charge for taxes or penalty might be made for years prior to the incumbency of the present owner.

In granting many of these indulgences, the states have been responding to a situation in which it was evident that in many instances arrearages simply would not be paid under existing statutes. Many of the moratoria must undoubtedly be viewed in the light of attempts to salvage what little could be collected and wipe the books clean of the rest, making the process as painless as possible.

On the whole, however, the indulgences have gone beyond this spontaneous position. They show the effects of pressure-group lobbying and public hysteria carrying over into the legislative chambers. Real estate groups and taxpayers' associations, generally lacking in knowledge of tax theory and caring only for their limited interest, have united in vociferously demanding that the legislators "save our homes." The fact that many of the indulgences are more to the advantage of the speculator than to the homeowner and farmer is, of course, due in part to the lack of accurate information on the distribution and incidence of tax delinquency during the earlier years when the trend of this legislation was established, and in part to the difficulty of herding the sheep from the goats in any hastily contrived legislation.

But while lobbyists and public hysteria can be blamed for the form the legislation took in many instances, the economic situation itself made indulgences in some form inevitable in many sections. Tax delinquency was well on its way to serious proportions before the depression. The financial storm merely broke down the system, and practically obliterated in many communities the mainstay of tax collection, the tax title buyer.

Normally, unpaid taxes would have run their course to sale by the levying unit, bringing to that unit, after delay but with compensating penalties and charges, the original revenue necessary for the operation of government. After sale, collection would normally have continued but with the buyer of the tax certificate supplanting the governmental unit as collector, so that, prior to the foreclosure date, all but a small percentage of the property would have been redeemed by full payment of the taxes due. Normally, the buying of tax titles has been a well-defined and profitable business, with the buyer financing the tax delinquent on the one hand and the levying unit on the other. But the collapse of realty values, and the tremendous increase in delinquencies, has literally swamped the tax title market, virtually wiping out the tax title buyer by making his business hazardous and unprofitable. Rather than buying lucrative investments, the title buyer has found himself purchasing the actual property, which he rarely wanted even in normal times.

[56] Tex. Laws 1935, c. 128.

[57] Ill. Laws 1935, H. B. 213.

Lacking buyers at tax sales, governmental units soon discovered that enforcing tax collection by means of tax sales simply meant acquiring liens rather than collecting revenues. After a few experiences in bidding in all the property offered, legislatures were urged to provide a way out. And many of the indulgences are basically the efforts of the new and unwilling tax title "buyer," the government itself, to make the most of an unhappy situation and permit payment of delinquencies under whatever terms.

Of course, not all of these tax collection moratoria are wholly to be condemned. Granted the necessity of making some concessions, many of the laws have been drafted to do the least possible damage to normal tax collection habits. Worst of the lot are those arbitrarily extending due dates, slashing penalties, and staying tax sales, without regard to the plight of the tax delinquent as an individual. This type of moratoria has done the most to encourage the "tax dodger" in his profitable attempt to delay payment indefinitely, confident that if he does so the legislature will respond with further concessions.

The best of the laws are, obviously, those which have attempted to differentiate between the deserving and the non-deserving tax delinquent, and have hedged their concessions with provisions designed to maintain current collections. Practically speaking, the amortization of tax arrears under a so-called easy payment plan, with an interest charge slightly in excess of the normal rate in the state, and conditional on payment of current levies when due, is perhaps the best type of moratorium. Extending the redemption period and easing redemption costs to the home-owner has much to recommend it, but in states where the glutted tax lien market has practically removed the tax title buyer, this concession means little in terms of governmental income. And in some cases machinery for compromising the total arrears, if handled by a discriminating adjustment board, will work little harm upon the taxpaying community as a whole.

Nevertheless, the moratorium trend has pushed already loosely administered collection systems toward a new low of chaos and laxity. In only a few states have tax-

RECENT LEGISLATIVE INDULGENCES TO DELINQUENT TAXPAYERS, 1930-1936
(Local and Special Legislation & Municipal Acts omitted)

States by Geographical Divisions		Due Date	Penalty Date	Amount of Penalty[1]
New England	Maine			Laws '33, S.B. 352
	New Hampshire			
	Massachusetts	Laws '33, cs. 168, 254, 325	See left	See left; Laws '35, c. 158
	Connecticut		Laws '33, c. 216	See left; Laws '35, c. 63
Middle Atlantic	New York	Laws '35, c. 256; Laws '36, c. 122	Laws '33, c. 91	Laws '33, c. 468; Laws '35, c. 256; Laws '36, c. 135
	New Jersey	Laws '33, c.	266, amended collection proced	ure generally
	Pennsylvania			Laws '35, Act 75, am'd, Act 180

[1]Penalty indicates penalty, interest, costs, or other fees.

paying habits been what could reasonably be called good.[58] Elsewhere archaic methods, confused law, and political administration have rendered property tax collection procedures anything but business-like. Some states will of course emerge from the mess with wholesale revisions resulting in improved tax collection systems, but many, it must be feared, will continue the ragged patchwork without taking steps to restore the taxpayer morale destroyed by the moratoria.

Furthermore, the agitation for tax collection indulgences has been predicated, in many instances, on an assertion of the "rights" of property owners, or home-owners, or farmers. The effect, and often the intention, of many of these laws is to subsidize property ownership. Without examining the wisdom or necessity for doing this, other than to note that without it much property would undoubtedly have passed to new owners either directly or after a period during which it was held by the state, it is evident that the act of subsidizing property ownership on the basis of *tax delinquency* is fraught with dangers to normal tax collection. In general, tax delinquency is no longer expensive and dangerous business. It has been made at most only slightly more expensive than borrowing from ordinary sources to make tax payments and, under the bulk of these laws, the tax collector as a lending agent has become a creditor who cannot refuse the loan. In some states during the past few years the prompt taxpayer has been nothing less than a philanthropist. It is not to be wondered, therefore, that hitherto conscientious taxpayers have succumbed to the attractive terms offered their delinquent neighbors and have lapsed their own taxes in order to get on the band wagon. Nor is it to be expected that, after this feverish whirlwind of indulgences, the restoration of normal and healthy taxpaying habits will be other than a long and costly process.

[58] It is not to be inferred, however, that all existing normal tax collection law has failed; there are ample reasons for believing, though, that the terms of the law have a definite relation to the ratio of delinquency to current levy. For a discussion of this point, limited to four simple criteria (viz., penalty at least equal to normal interest rate, relatively short period between due date and delinquency date, tax sale within a year of delinquency, and comparative absence of moratoria) and actual delinquency records, see (1935) 24 NAT. MUN. REV. 181 *et seq.*

RECENT LEGISLATIVE INDULGENCES TO DELINQUENT TAXPAYERS, 1930-1936
(Local and Special Legislation & Municipal Acts omitted)

TAX SALE	AMORTIZATION PLANS	REDEMPTION TERMS	FORECLOSURE	COMPROMISES
		Laws '33, S.B. 353		
Laws '33, Ch. 133				
	Laws '33, c. 308; Laws '34, c. 218	Laws '35, cs. 218, 354	Laws '34, c. 169	
				Laws '35, c. 63
Laws '35, c. 725		Laws '32, c. 335		Laws '35, c. 799
	Laws '33, c. 109; Laws '35, c. 42; Laws '36, c. 53			Laws '35, c. 119
Laws '35, Act 1, am'd, Act 390	Laws '33, c. 42; Laws '35, Act 180	Laws '35, Acts 138, 241, 356		

NOTE: This table includes only the most important statutes. Of two or more laws on the same subject adopted by a legislative session, the most representative and comprehensive is considered here. Laws of 1936 are included only to May in most instances.

Recent Legislative Indulgences to Delinquent Taxpayers, 1930-1936 (continued)

States by Geographical Divisions		Date Due	Penalty Due	Amount of Penalty[1]
East North Central	Ohio		Laws '33 (1st Sp. S.) S.B. 24	Laws'33, H.B. 663; Laws'35, H.B. 154
	Indiana		Laws '32, c. 65	Laws '32, c. 65; Laws '35, cs. 166, 317
	Illinois	Laws '35, S. B.'s 118, 390		Laws '35, H.B. 209
	Michigan			Laws '33, Acts 63, 267; Laws '35, Act 57
	Wisconsin	Laws '33, c. 426	See left; Laws '35, cs. 2, 209	See left; Laws '35, c. 128
West North Central	Minnesota			Laws '33, cs. 26, 28
	Iowa	Laws '35, c. 79	Laws '33, c. 124	Laws '35, c. 79
	Missouri		Laws '33, S.B. 94; Laws '33 (1st Sp. S.) S.B. 40	Laws '33, S.B.'s 80, 94; Laws '35, S.B. 143
	North Dakota			Laws '33, S.B. 1
	South Dakota			Laws '33, H.B. 132
	Nebraska	Laws '33, S.B. 7	Laws'33, S.B. 7; Laws'35, c. 156*	Laws '33, S.B. 17
	Kansas			Laws '33, H.B. 251; Laws '35, c. 308
South Atlantic	Maryland			Laws '35, c. 387
	Virginia			Laws '34, c. 30; Laws '36, cs. 55, 392
	West Virginia	Laws '33 (1st Sp. S.) cs. 15, 16; Laws '33 (2nd Sp. S.) c. 46	See left	See left
	North Carolina	Laws '35, c. 126	Laws '31, c. 83	See left
	South Carolina[2]		Laws '33, Acts 140, 662	See left; Laws '36, Act 256
	Georgia			
	Florida	Laws '35, c. 17441		See left
East South Central	Kentucky		Laws '32, c. 156	
	Tennessee		Laws '33, c. 7; Laws '35, c. 50	Laws '33, c. 7; Laws '35, S.J.R. 20
	Alabama	Laws '33, Acts 80, 93		
	Mississippi	Laws '33, H.B. 888	Laws '33, H.B. 888, S.B. 203	Laws '36, H.B. 234
West South Central	Arkansas			
	Louisiana	Laws '35 (5th Sp. S.) Act 35	Laws '34, H.C.R. 2	Laws '34, Act 6
	Oklahoma		Laws '33, H.B. 151	Laws '33, S.B. 2; Laws '35, c. 33
	Texas		Laws'33, S.B. 262; Laws'34, H.B. 7	See left; Laws '35, H.C.R. 13
Mountain	Montana		Laws '33, H.B. 4	Laws '33, H.B. 38
	Idaho			Laws '33, c. 206; Laws '35, cs. 2, 93
	Wyoming			Laws '33, c. 72
	Colorado			Laws '33, H.B. 64; Laws '35, c. 217
	New Mexico			Laws '35, c. 133
	Arizona			Laws '35, c. 30
	Utah		Laws '33, c. 61	See left
	Nevada		Laws '33, c. 99	See left
Pacific	Washington		Laws '33, c. 53	See left; Laws '35, c. 166
	Oregon		Laws '33, c. 326	See left
	California	Laws '33, c. 100	Laws '33, c. 100	Laws '33, cs. 612, 1018

*Indicates statute declared unconstitutional. [1]Penalty indicates penalty, interest, costs, or other fees.
[2]South Carolina adopted numerous special bills covering most of the counties in the state, under varying terms.

Recent Legislative Indulgences to Delinquent Taxpayers, 1930-1936 (continued)

Tax Sale	Amortization Plans	Redemption Terms	Foreclosure	Compromises
Laws '33, S.B. 42	Laws '33, S.B. 42; Laws '35 (1st Sp. S.) S.B. 359			
Laws '33, c. 2; Laws'35, c. 4	Laws '33, c. 30; Laws '35, c. 166			
	Laws '35, H.B. 783*	Laws '33, H.B. 669; Laws '35, H.B. 204, S.B. 469, H.B. 568*	Laws '35, H.B. 213	
Laws '33, Act 26	Laws '33, Act 126; Laws '33 (1st Sp. S.). Act 11	Laws '33, Act 2		
Laws '33, c. 426	Laws '34-'35 (Sp. S.) c. 8	See left; Laws '35, c. 24	Laws '34-'35 (Sp. S.) c. 8	
Laws '33, cs. 98, 337	Laws '33, c. 121	Laws '33, c. 40; Laws '35, c. 387; Laws '36, c. 72		Laws '35, c. 60
Laws '33, c. 133; Laws'33 (1st Sp. S.) S.F. 70, H.F. 232		Laws '33, cs. 132, 179		
		Laws '33, S.B. 1, H.B. 275; Laws '35, cs. 275, 280	Laws '35, c. 277	Laws '35, c. 272
	Laws '33, S.B. 91; Laws '35, c. 194	Laws '33, S.B. 2		
		Laws '33, H.B. 427; Laws '35, c. 307	Laws '33, H.B. 427	
	See left			
Laws '36, c. 69	Laws '34, c. 379			
Laws '35, c. 56		Laws '33 (2nd Sp. S.) c. 46; Laws '35, c. 91		
See left; Laws '35, c. 234			Laws '33, H.B. 1338; Laws '35, cs. 75, 313	
		See note 2		
		Laws, '34, Act 334; Laws '35, S.B. 173		
Laws '35, c. 17400	Laws '33, S.B. 507	Laws '35, cs. 17404, 17406	Laws '33, S.B. 192	Laws '35, cs. 16910, 17406*, 17405*
		Laws '32, c. 142		
		Laws '35, c. 38	Laws '35, c. 114	
	Laws '35, H.B. 324	Laws '33, Act 77; Laws '35, H. B. 324		
Laws'33,H.B.' s 277,1003		Laws '33, H.B. 452, S.B. 222		
	Laws '33, Act 16	Laws '33, S.B. 1; Laws '35, Act 6		
Laws '34, H.C.R. 2	Laws '34 (3rd Sp. S.) Act 25	Laws '34, Act 158; Laws '34 (2nd Sp. S.) Act 30		
	Laws '33 (1st Sp. S.) S.J.R. 3			
	Laws '33 (1st Sp. S.) H.B. 40	Laws '33 (1st Sp. S.) H.B. 150		Laws '35, c. 128
Laws '35, c. 88	Laws '35, c. 149	Laws '33, S.B. 3		
Laws '33, cs. 53, 73		Laws '33, c. 72; Laws '35, c. 127		
	Laws '35, cs. 2, 93	Laws '33, H.B. 105; Laws '35, cs. 17, 101		Laws '35, c. 146
Laws '33, S.B. 486				
Laws'31, c. 104; Laws'33 (1st Sp. S.) c. 27		Laws '31, c. 104; Laws '33, c. 109	Laws'31, c. 104; Laws '33 (1st Sp. S.) c. 27	
Laws '33, H.B. 12	Laws '33, c. 72; Laws '35, c. 30	Laws '33, c. 72	See left	
See left	See left	Laws '33, c. 61; Laws '35, cs. 85-87	Laws '33, c. 62	
See left		See left		
	Laws '33, c. 53	See left	Laws '35, c. 166	
	Laws '33, c. 462	Laws '35, c. 282; Laws '35 (1st Sp. S.) S.B. 48		Laws '35, c. 367
		Laws '34, c. 6; Laws '35, cs. 137,313		

TAX RECEIVERSHIPS

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The general problems and implications of property tax delinquency and the more usual methods of property tax enforcement have been treated sufficiently in other sections of this symposium to make further summary or comment at this point unnecessary. The discussion, therefore, may move directly to the consideration of an experiment of interest and importance in the field of delinquent tax collection. The experiment is the tax receivership, an extraordinary device which has been invoked from time to time recently to meet the utter breakdown of the more usual methods of tax enforcement.

Unlike the more common provisions for tax collection, the tax receivership is directed at the income from property.[1] It permits some public officer to take over the property taxed, to manage it, and to collect and apply its income to the tax, penalties, interest, costs, and costs of the receivership until the obligation is satisfied. There is no indication how or when it arose, but it must have been suggested by the analogy of receivership proceedings in mortgage foreclosures, and by the fact that the statutes of most jurisdictions make a real property tax a lien against the property taxed. These analogies become more apparent when we recognize that a statutory tax sale is commonly spoken of as a tax foreclosure, although in many jurisdictions, as in Illinois, there is a wide difference between the ordinary tax sale by a court of law and the foreclosure of the tax lien in equity. Such similarities make it appropriate, therefor, to consider as the first question: Can a tax receivership be instituted in the absence of specific statutory authority? After that the discussion should consider the provisions of the receivership statutes which have been adopted in a few

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[1] Minnesota has invented a device, directed at rents and income of property, which stops short of the tax receivership. Where the county has bid in the property at a tax sale the amount of the tax, penalties, and costs may be satisfied by attachment of the rents or, under certain circumstances, the crops. There is no provision for management or operation of the property beyond a restricted authorization that the county auditor may make or renew leases. Minn. Stat. (Mason, 1936 Supp.) §2150.

states and the administrative and legal experience involved in the application of those statutes.

Tax Receiverships in the Absence of Statute

It can be assumed with confidence that no tax receiver can be appointed by a court of law in the absence of specific statutory authority in the usual procedure for the sale of delinquent property. It is generally stated by the courts that proceedings for the enforcement of property taxes are statutory, that the statute must be followed accurately, and that it shall be construed strictly in favor of the property owner.[2] In establishing this statutory procedure, the legislature may confer jurisdiction upon either a court of law or a court of equity unless there is some specific constitutional limitation. Illinois, for example, confers jurisdiction upon courts of law in the ordinary tax sale proceedings, but for fifty-five years Illinois has also provided by statute for the foreclosure of the tax lien in equity.[3]

The rule that tax collection proceedings are exclusively statutory and require strict construction of the statutes is ordinarily assumed by the courts to apply to proceedings in equity as well as at law.[4] Nevertheless, in spite of judicial pronouncements to this effect, there is a possibility that courts of equity have some power to enforce tax liens in the absence of statutes conferring such power upon them. In any event, if a tax receiver is to be appointed without a specific provision for such a receivership, it is clear that it must be done under the inherent power of a court of equity, either in a foreclosure proceeding in which no part of the jurisdiction rests on statute or in a foreclosure proceeding based on a statute which fails to provide for such a receivership.

The language used by the courts to the effect that a court of equity has no jurisdiction to enforce a tax lien unless such jurisdiction is specifically conferred upon it seems to rest primarily upon two propositions:

(1) The assessment and collection of taxes are legislative affairs and no function of a court of equity.

(2) All proceedings for the collection and enforcement of taxes are statutory.

Thompson v. Allen County[5] is the case often cited in support of the first of these statements, and examination of the opinion and the cases cited there[6] shows clearly

[2] State *ex rel.* Tillman v. Dist. Ct., 53 P. (2d) 107 (Mont. 1936); People v. Illinois Women's Athletic Club, 360 Ill. 577, 196 N. E. 881 (1935); People v. Straus, 266 Ill. App. 95 (1932); Kansas City v. Field, 285 Mo. 253, 226 S. W. 27 (1920); Charland v. Trustees, 204 Mass. 563, 91 N. E. 146 (1910); Watts v. Hauk, 144 Tenn. 215, 231 S. W. 903 (1920); Board of Freeholders v. Inhabitants of Weymouth, 68 N. J. L. 652, 54 Atl. 458 (1903); McNally v. Field, 119 Fed. 445 (D. R. I. 1902); Thompson v. Allen County, 115 U. S. 550 (1885); People v. Biggins, 96 Ill. 481 (1880).

[3] Ill. Rev. Stat. (Smith-Hurd, 1935) c. 120, §238.

[4] People v. Illinois Women's Athletic Club, People v. Straus, Kansas City v. Field, People v. Biggins, all *supra* note 2.

[5] 115 U. S. 550 (1885).

[6] Walkley v. City of Muscatine, 6 Wall. (73 U. S.) 481 (1868); Rees v. Watertown, 19 Wall. (86 U. S.) 107 (1874); Heine v. Levee Commissioners, 19 Wall. (86 U. S.) 655 (1874); Barkley v. Levee Commissioners, 93 U. S. 258 (1876); Merriwether v. Garrett, 102 U. S. 472 (1880); Supervisors v. Rogers, 7 Wall. (74 U. S.) 175 (1869); McLean County Precinct v. Deposit Bank, 81 Ky. 254 (1883). See also Yost v. Dallas County, 236 U. S. 50 (1915).

that the situations involved in no way resemble a foreclosure of a tax lien such as that contemplated in this discussion. Those cases sought a remedy in equity when mandamus or other remedies at law had failed to protect the interests of security holders, and the aid of equity was asked to levy the taxes required to meet the bonds or to enforce a general collection of taxes over a whole community where the local administrative authorities had collapsed. This is a far greater demand on equity than a bill to foreclose a tax lien on a single piece of property, and a denial of equity relief in these cases does not justify an assumption that the foreclosure of a tax lien is a proceeding foreign to equity.[7]

As to the second point, we have found no cases in which equity's jurisdiction was denied and in which there was not some kind of statutory remedy. *Kansas City v. Field* presents a full discussion of this problem, and the language in which it states its conclusions on this point is of interest:[8] "The courts are practically unanimous in holding that if a statutory method of collection is provided, *especially if it is adequate and complete,* equity is without jurisdiction." Following *People v. Biggins,*[9] the opinion states that in the presence of an adequate statutory remedy for the enforcement of a tax lien, equity has no jurisdiction unless it is specifically conferred by statute. The court adds, however, that "perhaps" the following limitation applies:[10] "If a statute gives a lien for taxes and provides no particular mode to enforce the lien, equity will provide a remedy." It seems probable that these cases in which equity's inherent power to foreclose tax liens has been denied can be rested on the ground that the statutory remedy was adequate.[11] It is important to note that there are a few cases which indicate that inadequacy, as distinguished from absence, of a statutory remedy might be ground for foreclosure of the tax lien in equity although no statute confers such jurisdiction on the court of equity.[12]

[7] On this point the texts on the subject of receivers usually cite the Thompson case, *supra* note 5, and assume uncritically that it covers the whole problem. An exception is Tardy's *Smith on Receivers* (2 ed., 1920), sec. 689 (vol. 2, p. 1878), which cites the Thompson case to the effect that a court of equity will not appoint a tax receiver and continues as follows: "This statement, however, applies rather to the proposition of appointing a receiver as a substitute for the ordinary tax collecting officers to collect taxes in the ordinary way. However, when taxes are to be collected by suit in equity from some particular person whose property is subject to a lien for their payment, circumstances may be sufficient to warrant the appointment of a receiver. As in any other kind of a case, there must be some ground for the appointment beyond the mere claim, or cause of action, for the taxes; something in the nature of danger of loss, or removal, or injury to the property."

[8] 285 Mo. 253, 271, 226 S. W. 27, 32 (1920) (italics ours).

[9] *Supra* note 2.

[10] 285 Mo. 253, 271, 226 S. W. 27, 32 (1920).

[11] Kansas City v. Field, *supra* note 10, cites the following cases on this point: Corbin v. Young, 24 Kan. 145 (1880); Louisville Trust Co. v. Muhlenberg County, 15 Ky. L. 397, 23 S. W. 674 (1893); Greene County v. Murphy, 107 N. C. 36, 12 S. E. 122 (1890); McHenry v. Kidder County, 8 N. D. 413, 79 N. W. 875 (1899); Pierce County v. Merrill, 19 Wash. 175, 52 Pac. 854 (1898); Board of Education v. Old Dominion Co., 18 W. Va. 441 (1881). See also Mosher v. Conway, 46 P. (2d) 110 (Ariz. 1935); Lemhi County v. Loan Co., 47 Idaho 712, 278 Pac. 214 (1929); Spellman Land and Securities Co. v. Standard Investment Co., 293 Mo. 120, 238 S. W. 418 (1922); Rochester v. Bloss, 185 N. Y. 42, 77 N. E. 794, 6 L. R. A. (N. S.) 694 (1906).

[12] People v. Sears, 230 Ill. App. 484 (1923); Bates v. Realty Co., 306 Mo. 312, 267 S. W. 641 (1924); People v. Detroit, G. H. & M. Ry. Co., 169 Mich. 72, 135 N. W. 87 (1912); Marye v. Diggs, 98 Va.

In spite of the general language which has been used in the opinions, the list of precedents is not sufficiently impressive to justify the conclusion that equity has no inherent jurisdiction whatever in tax enforcement. If the statute makes the tax a lien against the property and if a court of equity can be convinced that the existing statutory remedy is inadequate, it is likely to take jurisdiction of a proceeding to foreclose the lien. The variable in the situation is, of course, the term *inadequacy*.[13]

The more important question to this discussion is this: If equity has jurisdiction of such a foreclosure, whether by statute or not, does it have power to appoint a receiver to manage the property and apply the income to delinquent taxes if there is no statutory provision for such a receiver?

In 1902, in an equity foreclosure of a tax lien under the Illinois statutes, which did not at that time provide for a tax receiver, the Circuit Court of Cook County appointed a receiver *pendente lite,* but in the Appellate Court the decree was reversed on the ground that the land was a sufficient security for the indebtedness and that under such circumstances, at least, the court had no power to appoint a receiver.[14] In October, 1931, in *People v. Straus*[15] a receiver *pendente lite* was appointed in a similar foreclosure proceeding in the Superior Court of Cook County, but this decree was reversed by the Appellate Court, which reached the conclusion that specific statutory authority was necessary and lacking. Although the case was apparently disposed of on the ground that tax collection proceedings, whether in equity or not, are strictly statutory, the court left a door very slightly open for the appointment of a receiver if the property is not sufficient security for the taxes due. In *People v. Illinois Women's Athletic Club*[16] a decree which, among other things, appointed a tax receiver in a suit in equity was reversed on the ground that the Illinois tax receivership statute was not in force at the time the appointment was made, but the problem was not given any reasoned consideration. Also, this was not a foreclosure proceeding.

749, 37 S. E. 315 (1900); Grant v. Bartholomew, 57 Neb. 673, 78 N. W. 314 (1899); Greene County v. Murphy, *supra* note 11; State v. Duncan, 3 Lea (71 Tenn.) 679 (1879); Edgefield v. Brien, 3 Tenn. Ch. 673 (1878); Webb v. Miller, 8 Heisk. (55 Tenn.) 448 (1873); Mayor v. McKee, 2 Yerg. (10 Tenn.) 167 (1826); McInerney v. Reed, 23 Iowa 410 (1868).

[13] The Supreme Court of Illinois, in People v. Illinois Women's Athletic Club, *supra* note 2, passed over a real opportunity to deal with this problem. It dismissed the whole issue of inadequacy of remedy very summarily without any recognition of the importance of the question presented. The Cook County Board of Commissioners filed several hundred bills in equity to enforce the payment of taxes when the ordinary machinery broke down completely in 1931 and 1932. The decree of the lower court fixed the amount of the taxes due, ordered payment, and appointed a receiver to collect. On appeal the court in a disappointing opinion ignored the fact that the remedies at law were inadequate as a matter of practical administration and reversed on the ground that courts of equity have no power to fix the amount of taxes due. In specifically considering the appointment of the receiver the court stated that the appointment was improper because such tax proceedings are statutory and no statute existed at the time to authorize such an appointment. There is no reference in the opinion to any of the cases cited in note 12 which suggests that inadequacy of the remedy at law is ground for equity jurisdiction in tax lien enforcement.

[14] Chicago Real Estate Loan and Trust Co. v. People, 104 Ill. App. 290 (1902).

[15] 266 Ill. App. 95 (1932). This opinion is a very important discussion of this problem.

[16] *Supra* notes 2 and 13.

In the case of *State v. Collier,* although the Tennessee statutes authorized the appointment of a tax receiver, the court said:[17]

"A court of chancery would doubtless have had the right to make such an appointment in a proper case regardless of the statutes, since the state is a lien holder."

This case is of interest, however, not so much because of this dictum as for its interpretation of the statute under which the receiver was appointed.[18] In reviewing the appointment of a receiver under the statute, the court made this statement:[19]

"There is no allegation in the petition that the property is being misused, wasted, or neglected so that the value of the security is being endangered. There is no allegation that the land is not adequate security for the taxes due. None of the grounds that are ordinarily set out upon the application of a lien holder for a receiver appear in the petition."

The cases and comments which deny the power of equity to appoint a tax receiver in the absence of statute clearly rest on the ground that all tax proceedings are statutory—a proposition upon which the preceding discussion throws some doubt. This, together with the usual assumption that equity has inherent power to appoint a receiver in a case within its jurisdiction if such appointment is necessary,[20] indicates that it is entirely possible that a court of equity has inherent power to appoint a tax receiver in a proceeding to foreclose a tax lien, whether or not the jurisdiction in the foreclosure suit rests on statute. This seems reasonable even in face of the fact that we have found no cases in which such an appointment has been permitted in the absence of specific statutory authorization.

The statement from *State v. Collier,* the comments of the Illinois courts,[21] and the grounds required generally for the appointment of receivers[22] indicate that any

[17] 165 Tenn. 163, 166, 53 S. W. (2d) 982 (1932). See, for a comment on this case, Note (1933) 11 TENN. LAW REV. 132, which concludes that the court did not imply any inherent power in equity to appoint a receiver but that it really rested this dictum on the fact that Tennessee statutes provide that equity proceedings for collection of taxes shall conform to other chancery suits. Relying on Thompson v. Allen County, *supra* note 5, it is suggested in the comment that equity has no inherent power to enforce taxes. The analysis is not persuasive nor critical, however, and makes no reference whatever to the Tennessee cases, especially State v. Duncan, *supra* note 12, which indicate that Tennessee might go as far as any state in permitting the exercise by courts of equity of inherent power in the enforcement of tax liens.

[18] "And in all cases, the courts in which such bills may be filed are authorized to appoint receivers to take charge of the property which is the subject-matter of the litigation and collect the rents and profits thereon, to the end that the net amount of such rents and profits after paying the receiver reasonable compensation, shall be applied to the taxes, costs, penalties, and interest involved in such suits and incident thereto." TENN. CODE (Shannon, 1932) §1602.

[19] 165 Tenn. 163, 166, 53 S. W. (2) 982, 983 (1932).

[20] See especially, Chicago Title and Trust Co. v. Mack, 347 Ill. 480, 180 N. E. 412 (1932). Also, Grand Rapids Trust Co. v. Carpenter, 229 Mich. 491, 201 N. W. 448 (1924); Cobe v. Guyer, 237 Ill. 516, 86 N. E. 1071 (1909); CLARK, RECEIVERS (2 ed., 1929) §283; SMITH, RECEIVERS (Tardy, 2 ed. 1920) §693.

[21] Chicago Real Estate Loan and Trust Co. v. People, *supra* note 14; People v. Straus, *supra* note 15.

[22] "The appointment of a receiver being a remedy of such a harsh nature, the power of appointment is exercised by the courts only in cases where failure to do so would place the petitioning party in danger of suffering an irreparable loss or injury. This generally means that, in order to show cause for the appointment of a receiver, the petitioner must show either a clear legal right in himself to the property in controversy, that he has some lien upon it, or that it constitutes a special fund out of which he is

inherent power of a court of equity to appoint a tax receiver could operate only in cases much more serious than those against which the tax receivership legislation of recent years has been invoked. It is probable that such a receiver could be appointed only if the property is inadequate security for the lien or if it is being wasted, misused, neglected, or destroyed. Even then, of course, the statutory remedy must be inadequate.[22a] Even if equity does have such power, however, it may not mean much. It seems probable that the grounds are so restricted that such an appointment could accomplish little as a matter of practical tax administration, for in most of the cases in which receivership proceedings have been initiated in Cook County it would be very difficult to prove waste, misuse, neglect, or destruction to the degree required in receivership proceedings in courts of equity.[23]

It is well to consider, of course, that the powers of the courts are susceptible to tremendous expansion in the interest of effective operation of government,[24] and the power of equity to appoint a tax receiver may be one point at which such expansion might be accomplished. Even under the restricted grounds which usually govern the appointment of receivers, the fact that property is producing income and the fact that taxes are delinquent might alone be evidence of waste sufficient to justify the appointment of a tax receiver *if the statutes make the tax a lien against the rents and income* and not merely against the property alone.[25]

TAX RECEIVERSHIP LEGISLATION

Whatever may be the possibilities of the inherent powers of a court of equity in the development of the tax receivership, the statutes are probably the basis of any present or immediately potential use of the device. It is a matter of interest, therefor, to undertake a brief comparison of the tax receivership legislation which has been enacted recently.

The statutes of Tennessee and Minnesota, to which some reference has already

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entitled to satisfaction of his demands, and it must appear that possession of the property was obtained by defendant through fraud, or that the property or income from it is in danger of loss from the neglect, waste, or misconduct of defendant, and applicant must have a present, existing interest in the property over which he seeks to have the receiver appointed." SMITH, *op. cit. supra* note 20, §9. To the same effect: REEVES, ILLINOIS LAW OF MORTGAGES AND FORECLOSURES (1932) §536; HIGH, RECEIVERS (4th ed., 1910) §§647, 643. But see Cashmore v. Hanna, 276 Ill. App. 339 (1934).

[22a] It may be necessary also to prove insolvency. One remedy at law is the action of debt against the property owner which might be regarded as adequate if the owner is solvent.

[23] Lack of space prevents any discussion of those statutes which provide for foreclosure of a tax lien in the same manner as provided for foreclosure of mortgages. See, *e.g.*, WIS. STAT. (1935) §75.19. The procedure established for general mortgage foreclosures generally includes the power to appoint a receiver for the property involved, and it is possible that the application of such procedure to tax foreclosures may carry with it, therefore, the power to appoint a tax receiver. This possibility may be worthy of investigation by tax officials who have not been armed with a specific tax receivership statute.

[24] People *ex rel.* McDonough v. Cesar, 349 Ill. 372, 182 N. E. 448 (1932), is a conspicuous example of a decision in which the Illinois Supreme Court stretched the revenue provisions of the state constitution to the breaking point in an effort to expedite the collection of taxes.

[25] For a discussion of the question of waste with respect to taxable property see State *ex rel.* Tillman v. District Court, 53 P. (2d) 107 (Mont. 1936).

been made, can be dismissed quite summarily.[26] The Tennessee legislation was rather badly emasculated by the court in the *Collier* case,[27] and the Minnesota statute was not intended to be a receivership provision, although it moves rather far in that direction. The Minnesota Supreme Court has been very liberal in its interpretation of the act,[28] but it remains far short of the provisions of law which have been passed in Illinois, New Jersey, and Ohio, all of which demand the special interest of this inquiry.[29]

Illinois began the real history of tax receivership legislation in 1933 when the legislature passed the famous Skarda Act in an effort to meet an extremely critical situation.[30] Tax collections in Cook County were approximately two years behind, the various municipalities were months behind in the payment of their teachers, police, and other public servants, and local government generally was on the verge of collapse for lack of revenue. The essential features of the legislation were as follows:

The county treasurer was authorized to apply to any court of competent jurisdiction to be appointed receiver of the rents, issues, and income of any property on which the taxes were more than six months delinquent and remained due and unpaid. No bond was required from the treasurer other than his official bond. The bill or petition was required to set forth "(a) that such taxes remain due and unpaid at the date of filing such bill or petition; (b) that the county collector[31] has exercised due diligence to collect said taxes; and (c) that he verily believes that such collection thereof can be made through a receivership of the rents, issues,

[26] *Supra* notes 18 and 1, respectively.

[27] *Supra* note 17. In the discussion which follows, the Tennessee statute is ignored. It has not been possible to get any specific information on the extent of application of this statute, but two recent articles, White, *Tax Delinquency in Tennessee—Legislative Aspects* (1934) 12 TENN. L. REV. 71, and Howard, *Tax Delinquency in Tennessee—Administrative Aspects* (1936) 14 *id.* 219, discuss tax remedies in Tennessee and do not mention the receivership. It seems justifiable, therefore, to assume that it has little or no practical importance in that state.

[28] See *In re* Taxes Delinquent (Johnson v. Richardson), 266 N. W. 867 (Minn. 1936).

[29] It is of some interest in passing to note that North Carolina has a statute providing that a receiver shall be appointed to wind up the affairs of any corporation which becomes delinquent in the payment of taxes against it or its property. The statute further provides for garnishment by the state against a corporate agent, officer, or debtor to satisfy the obligation of the tax. N. C. CODE (Michie, 1935) §8005.

In this connection attention should be called to statutes such as the Wisconsin statute, *supra* note 23, which adopt the ordinary mortgage foreclosure procedure for foreclosure of tax liens. In Iowa the county treasurer, in addition to all other remedies for the collection of taxes on personal property, may bring an ordinary suit at law, which is equivalent to an action of debt, and it is provided that the attachment and garnishment acts shall apply in any such proceeding. IOWA CODE (1931) c. 346, §§7186, 7187. In the attachment act it is further provided that if deemed necessary the court may appoint a receiver under the circumstances and conditions provided in the receivership act. *Id.*, c. 510, §12115. In appointing a receiver *pendente lite* in a civil action or proceeding the property or its rents and profits must be in danger of loss, material injury, or impairment. *Id.*, c. 549, §12713.

[30] ILL. ANN. STAT. (Smith-Hurd, 1935), c. 120, §§238a, 238b, 238c (Ill. Laws 1933, p. 873). The concept of the tax receiver was first introduced into the Illinois statutes in an amendment to the Farm Drainage Act in 1931 (ILL. ANN. STAT. c. 42, §33a) but as far as can be determined from the appellate court reports the statute has lain dormant. For a more detailed discussion of the Skarda Act, see De Long, *The Illinois Tax Receivership Act* (1933) 28 ILL. L. REV. 379.

[31] The county treasurer in Illinois is *ex officio* county collector.

and income of such property, and the bill or petition shall be verified and shall be *prima facie* evidence of the facts therein stated." The purpose of the receivership was defined as "collecting and satisfying the amount of taxes, penalties, interest and costs, and the costs and expenses of the receivership. . . ." It was further provided that the receiver might be authorized by the court to pay out of funds collected from the property "such expenses in connection with the maintenance and operation of the property as may be necessary to secure the greatest income from said property for the payment of taxes, penalties, interest and costs due thereon." The remedy was stated to be in addition to all other remedies for the collection of taxes.

There were several other corollary provisions which provided for expedition of the proceedings, for procedure to be followed if a complaint or objection had been filed against the taxes involved, for appeal to the Supreme Court, for abatement of the suit when the obligations of the property had been satisfied, and for an annual report by the county collector upon his administration of the receiverships. Another section provided for intervention by the county collector in any mortgage foreclosure suit which might be pending against the delinquent property.

The New Jersey[32] and Ohio[33] statutes were patterned after the Skarda Act and in many respects show its influence. Both make the remedy cumulative, require six months delinquency, and define the purposes of the receivership in about the same language as the Illinois act.[34] New Jersey has a provision somewhat different to cover taxes against which objections are pending. Ohio has nothing. Also, the Ohio provision has nothing on intervention in pending mortgage foreclosures while New Jersey has followed the Illinois section. The Illinois provisions on appeal and annual report are unique. All three statutes are similar in providing for the payment of the expenses of the receivership except that Ohio specifically authorizes the expenditure of the income for fire, windstorm, and public liability insurance premiums. Ohio and Illinois provide merely that the proceeding shall abate when the obligation is satisfied. New Jersey requires the collector to apply for a discharge.

The New Jersey statute differs from the Skarda Act in several particulars: It applies to property "in any municipality." Farm property or other real estate occupied by the owner and from which he derives no rent is exempt. The bill or petition is filed in the court of chancery, on five days notice to the owner, by the collector or other officer charged with the collection of taxes in the municipality. The approval of the governing body of the municipality is required. The bill or petition is similar to that set out in Illinois but it requires a further statement whether the property carries a first mortgage or not, and if so the name and address of the mortgagee. It has an interesting agency provision that if there is a first mortgage the receiver, with the consent of the governing body of the municipality, shall appoint

[32] N. J. Laws 1933, p. 1304.

[33] OHIO GEN. CODE (Baldwin's Supp. 1934) §§5703, 5703-1, 5703-2.

[34] New Jersey uses the term "rents and income" throughout, while Illinois and Ohio use "rents, issues, and income."

the mortgagee to act as agent to collect rents and manage the property. In other cases the receiver, with the approval of the governing body, shall appoint the person in charge or some other competent person to act as agent. It is specified that the receiver must apply to the court for removal of an agent.

In Ohio the county treasurer may file the petition in the court of common pleas if the property is not used and occupied in good faith by the owner as a private residence and if no agreement to pay in instalments is in effect. He is required to allege a description of the property, the amount of taxes, the fact of delinquency, and his belief that collection can be made. The form of the prayer is set forth in somewhat more detail in the Ohio act but the difference is not substantial. Several lots may be joined in one action, but the prosecutor may move for severance. In any case the decree or order shall be severally rendered. As in New Jersey and Illinois the petition shall be verified and shall be *prima facie* evidence of all facts stated therein. The tax duplicate or delinquent land tax certificate shall be *prima facie* evidence of the amount and validity of the assessments and other charges.

The court in Ohio is required to enter a finding of the amount of taxes due and unpaid, penalties, interest, costs, and charges and of the probable amount of rents, issues, and income which can be collected together with probable costs and expenses of the receivership. The court order requires satisfaction and appoints the county treasurer receiver. If it is found that the probable aggregate annual income is under $2000, it is to be conclusively presumed that the taxes and other obligations cannot be satisfied and the proceeding shall be dismissed. Where the property is used by the owner for manufacturing, mercantile, commercial, or other business purposes, the receiver on order of court is to collect rent monthly in advance from the owner. If any instalment is not paid when due, the court order shall have the force and effect of a writ authorizing the receiver summarily to evict and exclude the owner from the use of the property.

It became the practice under the Skarda Act in Cook County to file tax receivership petitions in the county court which has a very broad jurisdiction in tax matters. The Supreme Court, however, held that the statute did not give the county court jurisdiction in receivership cases.[35] Instead of amending the act to confer such jurisdiction, the Skarda Act was repealed on July 8, 1935 and a much simpler provision substituted.[36] Section 253 of the Revenue Act of 1872 is the section which for many years has provided that taxes shall be a lien against the property taxed and that such a lien may be foreclosed in equity after two years' forfeiture. It was amended to imply that the tax shall also be a lien against rents and profits and that the lien shall be enforceable after six months' delinquency by intervening petition in any pending suit, including ordinary tax sale procedure, having jurisdiction of the

[35] McDonough v. Gage, 357 Ill. 466, 192 N. E. 417 (1934); People *ex rel.* Englewood Bond and Mortgage Co. v. Jarecki, 357 Ill. 475, 192 N. E. 419 (1934).

[36] ILL. STAT. ANN. (Callaghan, 1932-1935 Supp.) c, 120, §268.

land.[37] The court in such petition shall have power to appoint the "County Collector only receiver to take possession of the real estate for the purpose of collecting the rents, issues and profits therefrom, and to apply the same in satisfaction of the tax lien." As reference to the passage in the note will show, this language is much more restricted than the provisions of the Skarda Act, except as to courts having jurisdiction, and there is some ambiguity as in the use of the word "only" in the preceding sentence. It has been assumed in administration that the new statute is as broad as the Skarda Act. Whether the courts will agree remains to be seen, for this language is capable of interpretation as restricted as that involved in the *Collier* case in Tennessee.[38]

This summary of statutory provisions would not be complete without some mention of the receivership provisions of the model Real Property Tax Collection Law drafted and published by a committee of the National Municipal League.[39] It is very similar to the Illinois, New Jersey, and Ohio provisions which have been discussed. It includes the New Jersey provision permitting appointment of the first mortgagee to act as receiver's agent on the ground that his interest in preventing subordination of his lien will insure good management. Its provisions on title and powers of the receiver especially should be copied in other receivership statutes.[40] It permits the receiver to resign at any time and provides for abatement of the action when the obligation is satisfied. Upon such abatement or resignation, excess funds remaining shall be paid into the court. While the Illinois and New Jersey acts provide for intervention in pending mortgage foreclosures where receivers are already in possession of the property, the model act provides for appointment of the tax receiver anyhow and requires the other receiver to pay over rents and income

[37] "Such lien may also be enforced at any time after six months from the day the tax becomes delinquent out of the rents and profits of the land . . . by petition in any pending suit having jurisdiction of the land, or in any application for judgment and order of sale of lands for delinquent taxes, in which the land is included, in the name of the People of the State of Illinois, on the direction of the County Board of the County or on the direction of the Corporate authorities of any taxing body entitled to receive any part of such delinquent tax. The process, practice and procedure under this act shall be the same as provided in . . . [general practice act] except that receivers may be appointed on not less than three days' written notice to owners of record or persons in possession. In all such petitions the court shall have the power to appoint the County Collector only receiver to take possession of the real estate for the purpose of collecting the rents, issues, and profits therefrom, and to apply the same in satisfaction of the tax lien. When the taxes set forth in the petition are paid in full, the receiver shall be discharged. . . ." The remaining provisions provide for refund of excess collected, provide that the amount on the collector's books shall be *prima facie* evidence of amount due, and require distribution of proceeds to sharing governmental agencies. *Ibid.*

[38] See the text above at note 19.

[39] See *Report of the Committee on a Model Tax Collection Law* (1935) 24 NAT. MUN. REV. (Supp.) 293, 296. See the criticism of this model act in Traynor, *The Model Real Property Tax Collection Law* (1935) 24 CAL. L. REV. 98.

[40] "Section 15. *Title and powers of the receiver.* The title of the receiver to the rents and income from such real property shall be the same as that of an assignee thereof, and he shall have all of the powers of such an assignee. He may pay out of the rents and income collected by him from such real property such expenses in connection therewith as may be necessary to keep the same in tenantable condition. The receiver may act through deputies or agents. The receiver may insure the property against loss by fire or other casualty."

collected. As in New Jersey, this model law exempts residence or farm property occupied by the owner and yielding no rent.

Extensive comparative comment and analysis of this legislation is impossible within the space of the present discussion. One impression is clear, however—that this legislation could have been better and less hurriedly drafted. The provisions of the model act are considerably the best in this respect. It is of interest to note, also, that all of this legislation, including the model act, provides that the remedy shall be permissive and not mandatory. These provisions are also unanimous in their failure to provide specifically that taxes shall be a lien against the rents and income of property taxed as well as against the property itself. This may not be an important matter but such a provision is at least a safeguard well worth including.

CONSTITUTIONALITY OF TAX RECEIVERSHIP LEGISLATION

It is inevitable that constitutional objections, both state and federal, should be raised against a procedure so drastic as that involved in tax receivership legislation. Some of these questions deserve mention here although none can be given extensive analysis.[41]

One state constitutional issue of rather general interest is the suggestion that tax receivership legislation violates constitutional provisions respecting the period of redemption from tax sale. This attack would seem to be somewhat farfetched in view of the fact that the appointment of a receiver is not a sale, although such constitutional provisions might possibly be construed to mean that a property owner is to have at least two years in which to pay his tax and during which he cannot be deprived of the possession of his property. While this issue needs further analysis, it is reasonable to conclude that such an interpretation is unlikely.[42]

A second state constitutional issue arises from the fact that the collecting officer is merely *authorized* to invoke this procedure. Is this an unconstitutional delegation of legislative power or a grant of arbitrary discretion? The Minnesota case on the attachment of rents is the latest to deal with this problem extensively and sustains a similar discretion in that statute.[43] Choice and discretion in the use of remedies seem to be characteristic of our tax collection statutes and this discretion is probably not fatal.

[41] Strictly local problems such as that of the jurisdiction of county courts in Illinois, considered in the Gage case, *supra* note 35, are purposely ignored in this discussion. Similarly, there are many other questions of law which are of interest in the discussion of tax receivers: What about a receiver's liability in tort for negligence? Is he liable in his personal capacity? In his official capacity? Or is he an officer of a state which has not consented to be sued? See Erwin v. Davenport, 9 Heisk. (56 Tenn.) 44 (1871).

[42] The following Illinois cases discuss this problem as it applies in execution on judgment in an action of debt. Even if the property taxed is the property sold, a one year redemption period is permitted in spite of the constitutional requirement of two years in a tax sale. Smith v. People, 3 Ill. App. 380 (1879); Douthett v. Kettle, 104 Ill. 356 (1882); Langlois v. People, 212 Ill. 75, 72 N. E. 28 (1904); Clark v. Zaleski, 253 Ill. 63, 97 N. E. 272 (1912); Zicarelli v. Stuckhart, 277 Ill. 26, 115 N. E. 192 (1917).

[43] *In re* Taxes Delinquent, *supra* note 28: "Under such a law as the one here involved, there are many reasons for the Legislature not establishing a hard and fast rule. This court necessarily must presume that public officials will do their duty and apply this statute wherever the necessity therefor arises." It goes on to hold very definitely that no unconstitutional delegation of legislative power is found.

A third issue of general importance under state constitutions is this: Is it necessary that the tax be a lien against rents and income of the property before the tax receivership may be invoked? This issue is rather vital under present statutes and no conclusive answer can be given here. To be entirely safe, tax receivership legislation should extend the lien to the income, although there is authority to the effect that a provision for the appointment of a receiver operates to extend the lien to rents and income even when such lien on rents and income is not specifically created.[44] Further, it has been held that a court has the power to appoint a receiver in a mortgage foreclosure although the trust deed or mortgage gives no lien against income.[45]

General issues of due process and questions of uniformity and classification (the latter especially where the statute is restricted to income producing property) can be raised under both state and federal constitutions. The courts are liberal, however, in permitting changes in tax enforcement procedures and since the receivership stops short of depriving the owner of title, it probably has nothing to fear from general due process provisions.[46] As to the problem of classification and uniformity, here again constitutional obstacle seems unlikely in this legislation and this discussion will let it suffice to cite the Minnesota Supreme Court on this issue.[47]

A federal constitutional question of some importance is the impairment of the obligation of contract. This issue might be raised if (1) it is held that the tax must be a lien against rents and income before the receivership can be imposed, (2) the lien on rents and income is created by the receivership act itself or at the time of its enactment, *and* (3) a receivership proceeding is then initiated against property on which a mortgage pledging rents and income has been given or an assignment of rents has been made prior to the statute creating the lien on income. No case has been found on the specific problem but the paramount character of the tax obligation is generally admitted by the courts,[48] and the states have been permitted wide power to change tax remedies as long as the rights of the parties to the contracts affected are not substantially reduced.[49] As far as the rights of mortgagees

[44] Haas v. Chicago Building Soc., 89 Ill. 498 (1878). See also, Bagley v. Ill. Trust and Savings Bank, 199 Ill. 76, 64 N. E. 1085 (1902); Freedman's Savings and Trust Co. v. Shepherd, 127 U. S. 494 (1888); Grant v. Phoenix Life Ins. Co., 121 U. S. 105 (1887); Omaha Hotel Co. v. Kountze, 107 U. S. 378 (1882); American Bridge Co. v. Heidlebach, 94 U. S. 798 (1877).

[45] Chicago Title and Trust Co. v. Mack, 347 Ill. 480, 180 N. E. 412 (1932); Roach v. Glos, 181 Ill. 440; Nickey v. Mississippi, 292 U. S. 393 (1934). See WILLIS, CONSTITUTIONAL LAW (1936) 694.

[46] Mt. St. Mary's Cemetery Assn. v. Mullins, 248 U. S. 501 (1919); Dane v. Jackson, 256 U. S. 589 (1921); League v. Texas, 184 U. S. 156 (1902).

[47] *In re* Taxes Delinquent, *supra* note 28, deals very fully with this problem and indicates that it offers very little restriction in establishing collection procedures.

[48] Many of the cases involve contracts of bondholders who own securities of the taxing district. Ingraham v. Hanson, 297 U. S. 378 (1936); Robinson v. Hanson, 75 Utah 30, 282 Pac. 782 (1929); Hanson v. Burris, 46 P. (2d) 400 (Utah, 1935); People *ex rel.* Odell v. Etchison, 347 Ill. 320 (1932); Moore v. Gas Securities Co. 278 Fed. 111 (C. C. A., 1907); Wabash Eastern Ry. Co. v. Commissioners, 134 Ill. 384, 25 N. E. 781 (1890); Union Trust Co. v. Weber, 96 Ill. 346 (1880).

[49] Ingraham v. Hanson, *supra* note 48; Hanson v. Burris, *supra* note 48; Hosmer v. People, 96 Ill. 58 (1880); State *ex rel.* Nat. Bond and Securities Co. v. Krahmer, 105 Minn. 422, 117 N. W. 780. But see Fisher v. Green, 142 Ill. 80; Moore v. Gas Securities Co., *supra* note 48; Jensen v. Wilcox Lumber Co.,

may be concerned, the tax receivership would seem to be less drastic than the tax sale for which it is a substitute.

The statutes which have been examined also raise a large number of procedural questions which undoubtedly could be presented as constitutional issues in any particular proceeding—matters of notice, provisions respecting *prima facie* evidence, and the like. These problems have not been sufficiently contemplated in drafting receivership legislation now in force. Although they are important, this discussion will pass over them in view of the fact that they can be remedied in practically all cases by amendment of the statutes involved. These issues as well as most of those mentioned in the preceding paragraphs of this section are details which do not have much bearing on the general issue of constitutionality of the receivership principle. It would be most astonishing if the principle itself should be held unconstitutional under either federal or state provisions.

EXPERIENCE UNDER TAX RECEIVERSHIP LEGISLATION

The tax receivership legislation in Illinois, New Jersey, and Ohio was the result of the breakdown of the revenue machinery during the depression. In Cook County the depression had the able assistance of a two year delay in the assessment and collection of taxes for the years following 1928—a delay arising from the fact that fraud and favoritism in the 1927 quadrennial assessment necessitated a complete re-assessment of the property of the county. In January, 1933, approximately $171,-000,000 in taxes for the years 1928, 1929, and 1930 were due and unpaid. Of this amount about $15,000,000 represented chronic annual forfeitures. $132,000,000, approximately, were due from large income bearing properties in trouble from the depression. Tax buyers refused to take more than a very small part of the offerings. Since equity foreclosure of the lien required two forfeitures, it was a simple matter to delay one of such forfeitures by injunction or objection for several years. The result of this situation in Illinois was the Skarda Act and similar, though less critical, conditions led to the Ohio and New Jersey acts.

It has been impossible to get full information on the administrative experience in New Jersey and Ohio but the reports of Newark and Cincinnati are of interest. The Department of Revenue and Finance in Newark has not taken physical possession of any properties under this act, although it credits the threat of receivership for collection of nearly $1,000,000 in tax arrears since the act went into effect. In Hamilton County, Ohio, only one receivership has operated under the act—from October 23, 1934 to June 4, 1935. Taxes amounting to $7,212.97 on this property were paid in full. A report to the county treasurer indicates that from April 4, 1934 to November 19, 1935 some action was taken by his office in 374 cases of delinquency involving $1,578,374.22. Of this all but $205,608.58 was paid by the end of the period. Here

295 Ill. 294, 129 N. E. 133 (1920); Thurber Art Galleries v. Rienzi Garage, 297 Ill. 272, 130 N. E. 747 (1921).

as in Newark it is clear that the threat of the act and not the actual operation constituted its value. The experience of Cuyahoga County has been similar.[50]

The experience of Cook County, Illinois, is quite different. From April 28, 1933 to November 15, 1933 approximately 11,988 petitions were filed in the county court. In 2,904 of these the county treasurer was appointed as receiver, although on November 15, 1933 only 820 properties were actually being managed in receivership. From April 28, 1933 to June 1, 1936, under both the Skarda Act and its successor, approximately 16,241 petitions have been filed in the circuit and county courts of Cook County. No figures are available to show how many of these properties were actually managed. Since July 8, 1935, when the present act went into effect, petitions have been filed in the county court in 608 cases, involving $4,221,630.24 of which $1,219,-622.06 has been collected. Of these 608 cases, 125 were dismissed on full payment without receivership; 142 at least are in complete abeyance pending disposition of some other action in state or federal courts; 47 cases were filed but never placed on the call because of promises to pay, pending reorganizations, or other reasons; 174 cases are on the regular call but no receiver has been appointed because the owner is paying in instalments; in only 18 of these cases is the county treasurer acting as receiver and managing the property.

After the county court was denied jurisdiction of tax receivership cases, all pending actions were transferred to or refiled in the circuit court, a total of 9,379 from June 25, 1934 to August 1, 1935. Approximately half of these were dismissed on payment in full. 1500 are still pending in the circuit court where average monthly payments of $150 to $200 per property are being made.

At the present time 360 properties in all are being managed under the direction of the county treasurer as receiver. These are mainly large hotel and apartment properties, although six residences are now in such receivership. No petitions have been filed against farm property and action is taken against vacant lots only if there is income from billboards. Small flat buildings are not put into receivership. There is no information available to show how much has actually been collected through the management of the property. For the first three months' operation of the act, April 28 to August 10, 1933, the county treasurer applied only $105,041 as net income from property managed as contrasted with $17,000,000 paid by property owners to escape receivership.

That the act has stimulated tax payments can not be questioned, but how much is due to the threat and how much to the operation can hardly be determined. In May, 1934 the state's attorney's office estimated that $100,000,000 had been collected through the Skarda Act and that if it should be declared unconstitutional a $40,000,000 annual slump in tax collections might be expected. From December 8, 1932 to April 27, 1933—141 days—collections on delinquent taxes for 1928, 1929, and 1930 were

[50] This information has been obtained by correspondence with the collecting officers involved. The material in the following paragraphs concerning Cook County has been supplied by members of the staff of the County Treasurer of Cook County.

$16,868,014.83. From April 28, 1933, when the Skarda Act became effective, to September 15, 1933—141 days—collections of the same taxes amounted to $23,786,-789.20.

Other figures for different comparative periods could be cited to show further that the act has been effective. Whether or not it has been popular is another issue. There has been much criticism of the administration of these receiverships—whether this is informed or not is difficult to determine. It is the practice of the receivership division of the treasurer's office to get the approval of the equity owner before purchases of equipment or permanent improvements are made. Further, court order must be obtained before expenditures are made except in cases of emergency or apartment decoration involving less than one and one-half times the monthly rental, and even in those cases the court must ratify afterward. The receiver's agents, of whom there are now 81 for 360 properties, must be registered real estate brokers. Their sole compensation is six per cent of the aggregate collections.

It is clear that in Cook County, as elsewhere, the most effective aspect of tax receivership legislation has been the threat of its use, and in its application thus far it has been assumed that it is merely an emergency device. However, it has been used in Cook County in some measure as a convenient instrument by which to acquire jurisdiction of the property while some arrangement, whether receivership or not, is worked out for payment. This suggests that the receivership might be developed as a permanent procedure to provide a more flexible instrument of tax enforcement to take the place of our older tax remedies. The following statement in the 1933 Report of the Illinois Tax Commission is an interesting suggestion for such a development:[51]

> "The possibility of further developing tax receivership legislation should be considered as a means of overcoming tax delinquency. Illinois pioneered with this device in 1933 and it has been used as a pattern in New Jersey and Ohio. A device of this character fits admirably the objective of foremost consideration to the state; namely, the securing of revenue. Since the state is not interested in disturbing titular relationships forced sale should be resorted to only in event all other devices fail. The provision of the law restricting the act to income producing properties is a feature which should be modified before the measure can be adapted for general use. It should include the properties owned by the resident as well as those producing pecuniary income through rental arrangements. Persons living in owned homes should have an opportunity to make an application for receivership on a voluntary basis. Under this arrangement an individual owning his own home would not subject himself to loss of title so long as the terms of receivership were complied with. Payments would be made monthly in essentially the same manner as a tenant meets his lease requirements. In the event voluntary receivership were not asked for, steps should be made to transfer the title to some one able and willing to assume the accrued obligations."

[51] Pp. 331-2.

COLLECTION OF DELINQUENT TAXES BY RECOURSE TO THE TAXED PROPERTY

H. K. Allen*

The procedure for the enforcement of tax liens is only one step—although an important one—in the entire tax collection sequence. All of the various steps are intimately related to one another, and the whole procedure is closely connected with the general fiscal, structural, and administrative aspects of government. Because the tax-sale machinery is so closely related to other devices in the collection procedure, it is difficult to segregate it for special treatment. Moreover, the variations in the laws of the different states governing the enforcement of tax liens are so great as almost to defy comparison.[1] Finally, the numerous changes which have been made in tax collection laws within the last five years preclude, within the time available, an accurate detailed description of the present status of these laws.[2]

Notwithstanding the wide variation in details, certain general features common to all are discernible in the tax collection laws of the various states. It is possible, therefore, to describe, illustrate, and appraise these characteristics. For the purpose of this discussion, it is assumed that the collection devices antecedent to the invocation of the tax-sale machinery have been treated elsewhere.

General Nature of Tax Delinquency Laws

While some consideration has been given in the formulation of tax delinquency laws to the rights of the taxpayer and the attraction of the buyers for the tax liens, the main objective of these laws, if it can properly be said that there has been a well-defined objective, has been to maximize tax collections. Notwithstanding the common objective in tax-delinquency legislation, the wide divergence in the laws in the various states suggests that there is no general agreement as to what constitutes

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[1] The legal provisions discussed in this article are based on the following sources: Hunter, *Legal Provisions Affecting Real Estate Tax Delinquency, Tax Sales, and Redemptions*, Bull. No. 48, Bureau of Business Research, Univ. of Illinois (1933); U. S. Bureau of the Census, Current Tax Delinquency by States and Counties—Levies of 1932-33 with Corollary Data (1934); Tax Research Foundation, Tax Systems of the World (6th ed. 1935); Alyea, *Land Redemption*, Studies of Legislative Problems in Alabama (mimeographed ms., Bureau of Business Research, Univ. of Alabama); Manning, *State Tax Legislation* (Library of Congress, 1935); St. John, *Real Property Tax Collection Procedures* (1936) 14 Tax Magazine 326.

[2] For a survey of these changes, see Smith, *Recent Legislative Indulgences to Taxpayers*, *supra*, p. 371.

a proper procedure. This is not meant to imply that any single procedure would prove equally satisfactory in all states. It does suggest, however, the need for a more careful consideration of the principles which should govern a well-planned tax collection procedure.

The collection of taxes and the sale of property for non-payment of taxes involve fundamental property rights. On the one hand, the institution of private property is sanctioned by constitutional edict; on the other hand, certain powers are reserved over property in the form of taxation, eminent domain, and the police power. The exercise of these powers, in turn, is subject to constitutional limitations. In this manner an equilibrium is established between government and property, and it is the function of the courts to preserve this balance. It is essential, therefore, that any interference with property rights such as are involved in tax delinquency laws should be based on a strictly legal procedure.

LIABILITY FOR PAYMENT OF TAXES

A common feature of tax-collection laws in every state is that taxes levied upon property are made a lien against the property, and the collection of the taxes is authorized by warrant. Not only is the real property itself liable for taxes levied against it, but in most states personal property may also be distrained and sold for the payment of real estate taxes.[3] Among the states in which this method of collection is not available are Louisiana, Nebraska, Minnesota, and Washington, and with some exceptions, Arkansas, California and Oregon. Unpaid personal taxes, on the other hand, commonly become a lien upon real estate.

In addition to recourse to the real and personal property of the taxpayer, provision is made for personal liability for the payment of property taxes in the states of Alabama, Georgia, Kentucky, Maryland, Mississippi, New Hampshire, North Carolina, Oklahoma, Tennessee, Virginia and West Virginia. The report of the committee on a model real property tax collection law of the National Municipal League recommends that, "Residents of the state who are owners of real property within the state shall be personally liable for taxes levied against such property, such liability to be enforced by appropriate action as for a debt."[4] This recommendation was limited to residents because it was thought that the imposition of such a liability upon non-resident taxpayers would probably be unconstitutional.[5]

Imprisonment for non-payment of taxes is provided as a further means of stimulating tax payments in Connecticut, Delaware, Maine, Massachusetts, New Hampshire, Pennsylvania, and Vermont.[6]

[3] See Rubin, *The Collection of Delinquent Real Property Taxes by Action* in Personam, *infra*, at p. 417.

[4] *Report of the Committee on a Model Tax Collection Law of the National Municipal League* (1935) 24 NAT. MUN. REV. No. 5 (Supp.) at 297.

[5] For a discussion of this problem, see Rubin, *The Collection of Delinquent Real Property Taxes by Action* in Personam, *infra*, at pp. 420-429.

[6] See *id.* at p. 418.

INTERVAL BETWEEN DELINQUENCY AND SALE DATE

Provision is made in every state for delinquent dates, penalties and costs, publication of delinquent lists, and tax sales. The period between the date of delinquency and the time for the sale of property for taxes varies greatly in the different states. While forty states have prescribed rather definitely the length of time that must elapse before property can be sold for taxes, the period is indefinite in Florida, Kentucky, Massachusetts, New Hampshire, New Mexico, Rhode Island, and Vermont.

The length of time between the delinquent date and the sale date for those states which provide for sale to private buyers during the redemption period varies from twenty days in Kentucky to eighteen months in Virginia. This period refers to the first delinquent date if taxes are paid in instalments. A longer period—three years and eight months—is provided in Ohio, but in this state there is no redemption period after the sale.

Under legislation enacted in 1935, tax sales have been postponed in seven states, namely, California, Indiana, Maryland, North Carolina, Pennsylvania, Tennessee, and Washington.[7] Because of pressure from taxpayers sales have been postponed or suspended in some instances by tax officials acting upon their own initiative. The abolition of the fee system in the few cases where it exists will remove an incentive to prolong delinquency.

If no redemption period is allowed after the sale, it is obviously necessary and desirable that the period between the delinquent date and the sale date be sufficiently long to afford the taxpayer a reasonable opportunity to protect his property. In other cases, it is equally desirable that the tax sale should be held at a general sale as soon as practicable after the date of delinquency of the last instalment. It should also be made mandatory that sales be held annually on a definite date. This might no doubt be facilitated by making the collector an appointive rather than an elective office, and requiring him to give a surety bond assuring the faithful performance of his duties, including the strict enforcement of all provisions of the law.

NOTICE OF SALE

Since the sale of real estate for taxes, as suggested above, involves property rights, due process of law requires adequate notice of the time and place of the contemplated action. Personal notice, either by ordinary or registered mail, is required in some states. The statutes of other states prescribe that notices must be posted on the courthouse door and/or other conspicuous public places. A majority of the states, however, provide that the notice of sale must be published in a newspaper for a certain number of times prior to the sale. The number of insertions required varies from one in Illinois, Missouri, New Mexico, Tennessee, and Washington, to six in New York. Seven states require two consecutive weeks of published notice; eighteen

[7] Manning, *supra* note 1, at 22.

states require three published notices; and thirteen states require four consecutive weekly insertions.

A requirement for the publication of an unreasonable number of notices naturally results in unnecessary costs. It has been reported that costs of advertising delinquent tax lists are unduly high in New York because of the requirement in the statutes for six consecutive weekly insertions.[8]

The practice regarding publication of notices will be guided by the prevailing procedure for legal notices in the different states. The committee on a model tax collection law of the National Municipal League recommends that, "notice shall be published once in the first and once in the last of the four calendar weeks preceding the calendar week containing the day appointed for the sale in a newspaper of general circulation in the taxing district and which has circulated generally in the taxing district for at least one year prior to the date of such publication. It shall also be posted in five conspicuous public places at least four weeks before the day appointed for the sale."[9] The model law also provides that the notice shall contain a description of the real property to be sold as it appears upon the duplicate, the owners' name if known, and the amount due with penalties and costs. Finally, it is provided that the collector shall mail a prepaid copy of the notice to the owner, if his name and address are known.

Inaccurate records of ownership, lost owners, and incorrect land description often make it difficult to give proper notice as well as to enforce the succeeding steps in the tax collection procedure. These difficulties can be somewhat alleviated by periodically checking the records of land transfers and by noting the sources of remittances for taxes. Improper notice of the tax sale has been given in some places because officials, as an economy measure, dispensed with the publication of the delinquent lists. Making the enforcement of the various provisions mandatory, as previously suggested, should remedy this situation.

The governmental unit conducting the sale is usually responsible in the first instance for the payment of costs of publishing the notices of sale, and if the property is redeemed, these costs are included among other redemption charges. Under the Jones-Munger Law enacted in Missouri in 1933 specific provision was made for the payment of the cost of printing notices by the purchaser.[10] The purpose of this provision was obviously to relieve the county of these costs. Some of the effects of the law, however, were probably not anticipated. The shortage of tax buyers and the fear that a sufficient number of tracts would not be purchased to cover costs of advertising have caused a few newspapers to refuse to publish the lists.

[8] *Fourth Report of the New York State Commission for the Revision of the Tax Laws*, 17 N. Y. STATE LEGIS. Doc. No. 56 (1934), p. 52.

[9] *Report of the Committee*, *supra* note 4, at 299.

[10] Mo. Laws 1933, p. 425.

THE TAX SALE

Although it seems desirable that the order for a tax sale should issue from a court, in approximately two-thirds of the states it is purely an administrative act, authorized by statute. Illinois is an example of a state in which the order for the sale has judicial authority. Upon petition of the collector at a specified time in this state the court renders a blanket judgment and issues a general order for the sale.

The most common type of tax sale procedure is that in which certificates are sold and redemption is permitted for a certain period, after which a tax deed is issued.[11] A second type of procedure in operation in a few states provides for the automatic purchase of all delinquent tax liens by the state or county. The laws of California, Idaho, and Utah illustrate this second type. The state automatically purchases the delinquent tax liens in California and Idaho, and the county is the purchaser by operation of the law in Utah. These laws provide for the liquidation of the liens after a fixed period.

The procedure in Ohio is illustrative of a third type of procedure which obtains in a few states. No provision is made for the sale of certificates, but the tax lien is foreclosed by legal process and the property is sold three years and eight months after delinquency. Missouri had a similar procedure before the adoption of the Jones-Munger Law in 1933.

Included in a fourth group are a limited number of states in which tax certificates are sold and a fixed period of redemption allowed which is followed by a proceeding to enforce the lien by foreclosure in a manner similar to a mortgage foreclosure. Various modifications of this general plan are found in North Carolina, Nevada, New Jersey, and Nebraska. In Oregon and Washington the sale is private, but if no sale has been effected within a certain period from the delinquent date, a certificate is issued to the county and foreclosure proceedings are begun immediately.

The tax collection laws of Illinois[12] are illustrative of the first and most common type of procedure. The principal provisions of this procedure include (1) the sale of tax certificates to private individuals, (2) forfeiture to the state in the absence of private bidders, (3) right of redemption for two years after date of sale, and (4) issuance of a tax deed without foreclosure at the expiration of the redemption period.

The tax sale is held in Illinois, upon the order of a court, approximately four months after the delinquent date of the first instalment. The penalty from the date of delinquency to sale date is one per cent a month. The successful bidder at the sale is the person who is willing to accept the lowest rate of interest on the tax certificate, the legal maximum being twelve per cent. The penalty for the first six months is the rate bid at the sale, twice the rate for the second six months, three times the rate for the third six months, and four times rate for the last six months. A deed

[11] See CHATTERS, THE ENFORCEMENT OF REAL ESTATE TAX LIENS (Municipal Administration Service, 1928) 9-10.

[12] See ILL. REV. STAT. (Smith-Hurd, 1935) c. 120, §§170-215.

issues if the property is not redeemed with the two-year redemption period. In the absence of a bid sufficient to cover the taxes, the property reverts to the state and a flat-rate annual penalty of ten per cent is imposed. The Illinois law also provides for the foreclosure and sale of forfeited lands, but this law is inoperative in most counties.

A majority of the states employ a procedure similar to that of Illinois, but there is a noticeable lack of uniformity in the details. Twenty-one states provide that the real estate shall be sold to the highest bidder, although most of them require that only enough of the property be sold to cover the amount to be collected. In ten other states the successful bidder is the buyer offering to pay the amount due for the least quantity of land. The successful bidder in eight states is the person who offers to pay the amount due at the lowest rate of interest or penalty, the maximum rate usually being fixed by law and ranging from eight to eighteen per cent. In six states the property is sold to the buyer who offers the amount due.

It is usually stipulated that no amount less than taxes plus costs can be accepted; but some states make provision for selling the property for less than taxes and costs when the amount exceeds the value of the property. In Missouri, if the property does not sell for taxes and costs for two successive years, it is sold the third year for whatever it will bring. According to local officials, some taxpayers in this state, recognizing the shortage of tax buyers in recent years, have deliberately permitted their property to become delinquent, knowing that they could purchase it for a small sum the third year. After being restored to good standing, the property is then permitted to become delinquent again.

The purchaser at a tax sale is usually given some kind of legal instrument which evidences his interest in the property. This may be called a tax certificate, a certificate of purchase, or a certificate of sale. In some cases it is called a tax deed, but it does not, of course, convey valid title to the property.

The proceeds of tax sales are usually distributed among the tax-levying jurisdictions according to their proportionate interests. Each unit does not bear its proportionate share of tax delinquency, however, in Idaho, New Jersey, New York, New Hampshire, Washington, Oregon, Wyoming, and Wisconsin.

REVERSION OF FORFEITED PROPERTY[13]

Within the last five years many tax sales have been devoid of purchasers for the tax liens. With a few exceptions the tax sale laws of the states provide for such a contingency. Twenty-seven states provide for bidding in the property if the statutory price is not offered by a private buyer. In nine states authority is given the governmental unit to bid in the property, but the action is not compulsory. In three states, Illinois, Ohio, and North Dakota, forfeited property automatically reverts to the government. In three other states, Indiana, Missouri, and Rhode Island, the land is never acquired by the government.

[13] In connection with this topic, see Wager, *Utilization of Reverted Tax Delinquent Land in Rural Areas*, *infra*, p. 453.

Eligibility for the benefits of the Fulmer Act after June 30, 1942 is contingent upon the adoption of appropriate tax delinquency laws prior to that date.[14] Included among the measures required is provision by law for the reversion of title of tax delinquent lands to the state or a political unit thereof.

Property reverts to the state if not sold in fourteen states and to the county or other local governmental unit in the remaining states except in a few instances where the sale may be continued or postponed. Whether forfeited property should revert to the state or the county is a controversial question. From a legal standpoint it should revert to the state since property rights are created by the state. The state would also seem to possess an advantage in the administration of forfeited property. Coöperative arrangements with the federal government could thereby be better facilitated; and lands adapted to county or municipal administration might be conveyed to them. In any event, the unit to which forfeited lands revert should probably make some settlement with the other jurisdictions for the loss of the tax base.

Tax receivership laws designed to alleviate the loss of revenue from forfeited property have been enacted in Illinois, Minnesota, New Jersey, and Ohio.[15] The lack of adequate facilities for the administration of the extensive holdings of forfeited property is no doubt one of the most serious weaknesses of existing tax collection laws.

REDEMPTION

The term "redemption," according to Hunter, refers to the right of the original owner to demand a reconveyance.[16] Except in a few states like Ohio in which there is a long period of delinquency and redemption is not permitted after the sale, sales of real estate are made subject to redemption during a specified period. The privilege of redemption is usually extended to the owner, the owner of a part interest, or to any person with a legal interest such as a mortgagee.

The redemption period is one year in thirteen states; two years in nineteen states; three years in eleven states; and four years in one state. The usual provision is that the person redeeming the property must pay the price paid at the tax sale, plus an additional flat-rate penalty and/or interest from the day of sale. The penalties when the tax lien is held by the government sometimes differ from those which apply when the certificate is held by an individual. The redemption period, generally with reduced interest or penalties, was extended by twelve states in 1935.[17]

As a general principle, the length of the period of redemption should represent a fair compromise between the rights of the owner and the interests of government. The model tax law of the National Municipal League suggests a period of one year from the date of sale, or at any time thereafter until the right to redeem has been foreclosed.[18] This assumes, of course, that the sale is held soon after the delinquent date.

[14] The Fulmer Act, 49 STAT. 963 (1935), 16 U. S. C. A. §567 (a), provides federal financial aid to states for the acquisition of forest land.

[15] For a discussion of this legislation, see De Long and O'Brien, *Tax Receiverships, supra*, p. 382.

[16] Hunter, *supra* note 1, at 17.

[17] Manning, *supra* note 1, at 23.

VALIDITY OF TAX TITLES

"A tax deed," according to Chatters, "issued at the expiration of the statutory redemption period of a tax certificate, with no judicial process involved, is a poor instrument in the eyes of land title examiners and courts of law."[19] This statement is confirmed by answers to a questionnaire sent the state tax administrative agencies.[20] According to these reports, tax titles are weak or questionable evidences of ownership in nineteen states; in eight states a tax deed conveys a merchantable title. A tax deed issues in Illinois at the end of two years, but it requires nine years to mature the deed.

By statutory provision tax deeds have been made *prima facie* evidence of the facts stated therein in nearly every state. This shifts the burden of the proof to the person attacking the validity of the sale. Statutes making tax deeds conclusive evidence of the facts stated therein, however, have been declared unconstitutional in many cases.

In order to secure tax titles from attack, it is desirable, therefore, that tax liens be enforced by a proceeding similar to that used in foreclosing mortgages. This affords the owner a day in court, giving him an opportunity to present his defenses.

The cost of foreclosure might be used as an argument against its adoption. A study made by C. H. Hammar showed that during the period 1927 to 1932 in Missouri the number of transfers in which costs exceeded considerations was greater than those in which considerations exceeded costs.[21] It would seem that the cost of foreclosure might be markedly reduced by requiring the public prosecutor to handle them in blanket form for a nominal fee. A combination of causes of action is authorized in Nebraska, Washington, Oregon, and Texas. To the extent that foreclosure produces a valid title, it might facilitate public purchase of submarginal lands in places where such purchase is handicapped by title difficulties.

Another objection to a foreclosure proceeding is the difficulty of serving process on unknown and/or non-resident owners and minors. The model tax law suggests a solution of this problem by a procedure *in rem* as an alternative to foreclosure by proceedings *in personam*.[22] Under this plan, it would be possible to serve a summons by publication. In lieu of naming the defendants, it makes it possible to describe them in the summons and other papers in the action.[23]

EFFICACY OF TAX-SALE MACHINERY

The shortage of buyers for the tax liens in many states in recent years raises a question as to the advisability of selling certificates to private buyers during the running of the redemption period. The serious breakdown of the tax-sale machinery

[18] *Report of the Committee, supra* note 4, at 301.

[19] CHATTERS, *op. cit. supra* note 11, at 13.

[20] From incomplete replies to a questionnaire sent to state tax administrative agencies by the Resettlement Administration.

[21] Hammar, *Land Tax Delinquency in Missouri* (Agr. Exper. Station, Univ. of Missouri, 1935) 34.

[22] *Report of the Committee, supra* note 4, at 303.

[23] See Brandis, *Tax Sales and Foreclosures under the Model Tax Collection Law, infra,* p. 406.

is attested by the fact that sixteen state tax administrative agencies reported that the tax sale has operated unsatisfactorily in recent years, while only nine agencies reported successful operation.

The logical argument in favor of a sale of tax liens to private buyers is that it places the government in immediate possession of funds, the receipt of which would otherwise be delayed. Alyea observes that the burden to the state of forfeited lands is a function of two variables: "First, the absolute value of the taxes so invested. Second, the turnover of the investment."[24] Data are not available to afford a factual basis for the purpose of comparing tax collections in states with and without a sale of tax liens. It is a fact, however, that in the pre-depression era real estate tax delinquency did not constitute a very large percentage of the total tax levy in most states. Moreover, a large proportion of delinquent tracts were redeemed before sale.

While the government would suffer some loss of revenue from the current taxes if no provision had been made for sale of liens to individuals, this would be partly offset by a flow of revenue from redemption of tracts which had been delinquent in previous years. The net effect of having no tax sale to individuals, then, might be only a small decline in tax collections. If necessary, a revolving fund might be established to stabilize the flow of revenue. Eighteen state tax administrators reported that in normal times the turnover of delinquent taxes is rapid enough that back taxes collected each year would largely offset current delinquency; six indicated that it would not be sufficient.

Another argument against the sale of tax certificates to private buyers is that during a period of depression when tax delinquency is high tax buyers refrain from purchasing the liens. A majority of the certificates in most states are bought by professional tax buyers. These purchasers naturally operate to some extent with borrowed funds; they purchase tax liens for the high rate of return on the investment, and often not because they desire or expect ever to take title to the property.

To the extent that purchasers of tax certificates operate with borrowed funds, the general credit stringency has been a factor in the decline of tax sales. The purchase of tax liens has no doubt been further deterred by the fact that tax titles are weak evidences of ownership in many states. The procedure thus breaks down at the precise time when there is the greatest need for its successful operation. If tax liens are held by the government, the owners are naturally not required to deal with private persons when they wish to redeem their property. Finally, if the liens are not sold to individuals, the government rather than private persons collects the penalties.

Whether liens are sold to private buyers or not, machinery should be established to administer chronically-delinquent lands. This is desirable to control unethical promotional activities in such lands, to reduce public and private expenditures, and to convert such lands to their highest permanent uses.

[24] Alyea, *supra* note 1, at 34.

TAX SALES AND FORECLOSURES UNDER THE MODEL TAX COLLECTION LAW

Henry Brandis, Jr.*

This article is concerned only with a very brief examination of the sale and foreclosure provisions of the so-called Model Real Property Tax Collection Law[1] drafted by a special committee of the National Municipal League under the chairmanship of Mr. Arnold Frye of the New York Bar. The first twenty sections of the Law, which deal with collection procedure prior to sale, and which contain a number of provisions calculated to aid or insure efficient collection, are beyond the scope of the article.

For introductory purposes the sale and foreclosure provisions of the Law may be summarized as follows: After due advertisement by posting and publication, a sale of liens for delinquent real property taxes is to be held on October first following the fiscal year in which the liens attach. All liens held by different taxing districts against the same parcel are to be consolidated for purposes of this sale, and one district is to be charged by law with duty of enforcement. A tax sale certificate, representing the liens against the parcel, is to be issued to the bidder who will accept the lowest interest rate, the maximum allowable rate being 12% per annum. If there are no bids within this maximum the taxing district becomes the purchaser at an interest rate of 10% per annum. Failure to sell at the proper time does not affect the lien, but if the sale is not held within three months of the prescribed time the office of the collector is automatically vacated and the sale is to be conducted by the State Tax Commissioner (or similar official). In the case of liens amounting to less than ten dollars the sale may be deferred, in the collector's discretion, until the third October first following the close of the fiscal year.

The purchaser of the certificate may record it and if such purchaser is not a taxing district failure to record within three months after the sale renders the certificate void as to *bona fide* purchasers, lessees and mortgagees first recording their interests.

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[1] The full text of the Model Law will be found printed as a supplement to the May, 1935, issue of the *National Municipal Review*. 24 Nat. Mun. Rev. 290.

The certificate is made "presumptive evidence" of the truth of its statements, title to the property, and the validity of the prior proceedings. This presumption so created becomes conclusive two years from the date of recordation.

Redemption may be had by payment of the face amount of the certificate plus interest, subsequent municipal charges and taxes, and such expenses as may have been incurred and properly proved by the certificate holder, such expenses not to exceed twelve dollars. All redemption payments are to be made to the collector for the use of the purchaser.

The certificate holder, whether private person or taxing district, may bring a foreclosure action: (a) after one year from date of sale, or (b) after default in any semi-annual interest instalment, or (c) after default in payment of any subsequent municipal tax or charge. When a taxing district holds a certificate it may allow redemption not only by a lump sum payment but also by instalments covering a period not exceeding five years, and once such an arrangement has been made the district may not assign the certificate or begin foreclosure until after default on an instalment or default on payment of some subsequent tax or municipal charge. The foreclosure action may take the form of an action *in personam* or an action *in rem* at the option of the certificate holder. In the latter type of action the only service of process required is publication and posting of a prescribed notice to the persons interested in the property, who need not be named; a *lis pendens* is also to be filed.

In neither type of action is it contemplated that there will be a judicial sale of the property. The judgment will take the form of a declaration that the plaintiff is the owner of the property in fee. Certificates owned by the same plaintiff, though affecting different parcels, may be joined in one action. Except when brought by a taxing district no foreclosure action may be concluded by judgment until all subsequent municipal charges and taxes have been paid.

At the outset, it should be remarked that, in selecting the device of judicial foreclosure of the tax lien in lieu of the execution of a deed to the tax certificate holder by an administrative official, the draftsmen of the Model Law have adopted, in the interest of security of tax titles, a procedure which has been criticized as clumsy and expensive. However, the foreclosure proceeding *in rem* for which the Law makes provision is stripped of those requirements which are a principal source of expense and delay to the foreclosing lienholder. By rendering it unnecessary that persons having an interest in the property be named in the published summons, the need for a costly title search to ascertain their identity is obviated. The provision that actions against different parcels may be consolidated represents another saving. A third economy results from the elimination of the necessity for a public sale of the property in the foreclosure proceeding. It is perhaps not too much to say that the principal difference between foreclosure *in rem* under the Model Law and the administrative procedure for conveyance as it exists in a number of states is that the former takes place in the court-room and the latter in the sheriff's office.

With the desirability and soundness of the general purposes of the Law the writer is in agreement, and with the majority of its provisions there can be little quarrel. Consequently no useful purpose could be served by an attempt (particularly by this writer) to weigh each section and approve or disapprove its provisions. The writer desires only to discuss briefly a few provisions with respect to which there may be room for modification or improvement or at least for a difference of opinion. Upon the questions he raises he does not pretend to pose as the ultimate oracle. He freely concedes that he is outnumbered and outranked by the League's committee in both wisdom and experience. Further, he is the first to concede that his approach to the problems may be too narrowly confined by the range of his experience, which consists largely in the study of the operation of the sale and foreclosure laws of North Carolina during the years of depression and incipient recovery—laws which, as interpreted by our courts, could under no circumstances be called model. His reason for raising these questions is his belief that they are legitimate matters for legislative attention in states comparable to North Carolina, which itself is—or ought to be—in the market for a new foreclosure law.

Professor Roger J. Traynor, in a recent issue of the *California Law Review*,[2] has made a number of suggestions with respect to the Model Law with which the writer, in the main, is in agreement. It is not necessary to examine all these suggestions here, and only those in connection with the matter of recording tax certificates will be discussed herein.[3] For convenience in presentation the questions the writer wishes to raise will be divided numerically and more or less arbitrarily, and no attempt will be made to present any summarizing conclusions:

(1) When the taxing district becomes the purchaser, why issue a tax sale certificate? It has been the observation of the writer that when collection records are otherwise adequate the issue of certificates to the taxing unit serves more to confuse than to aid the record system. The "sale" can be held in the manner proposed by the Law and the taxing district can be given the same rights after sale that the Law proposes; but can anything be accomplished by giving to the unit a separate piece of paper called a "certificate" that cannot be accomplished by the preservation of the

[2] (1935) 24 CALIF. L. REV. 98.

[3] The principal points made by Professor Traynor with respect to provisions of the Law discussed in this article are the following:

(1) The relationship between the three remedies accorded the taxing unit, personal action as for a debt, receivership proceedings, and the sale of tax certificates, should be clarified by a provision stating these remedies to be cumulative. *Id.* at 102.

(2) The provision that the certificate of sale should be "presumptive evidence" of the truth of the statements therein should be strengthened by substituting "prima facie" for "presumptive," and this presumption should be rendered conclusive two years from the date of the issuance of the certificate rather than from the date of its recordation. *Id.* at 103.

(3) The differentiation in the Law between foreclosure proceedings *in personam* and *in rem* seems unnecessary since evidently under neither is sale of the property or a deficiency judgment contemplated. "A simple provision" for "either personal service or service by publication at the option of the holder" would suffice. *Id.* at 104.

predetermined tax receipt or at most by giving such a receipt a brief lick with a rubber stamp?

It is true that the Model Law hopes to place tax liens in the hands of independent purchasers, but this cannot be done in every case. If the experience of North Carolina during the past few years means anything it means that we will have no substantial revival of independent buying of certificates during the next few years, with or without the Model Law. In one of our counties more than 15,000 certificates were issued to taxing districts in one year, despite the fact that in the particular county the collection offices of city and county have been consolidated. The time and expense involved in this, which are considerable, represent almost a complete waste. A collector in one of our larger cities has saved his city considerable sums over a period of years by refusing (in violation of the law) to issue certificates in the name of the city until the City Attorney demands them for foreclosure purposes, by which time the majority of the liens have been paid.

Perhaps this suggestion might seem trivial and purely formal; but in North Carolina alone the total saving involved would be extremely worthwhile, and it is certain that North Carolina is not the only state in which private purchasing of certificates is so rare as to be virtually nonexistent.[4] Because all record systems might not be equally suited to adoption of this suggestion, it would probably be best to give to local authorities the privilege of eliminating issue of certificates to taxing districts wherever it would not result in impairment of the efficiency of the collection records.

In a few cases it is possible that the predetermined tax receipts could easily be converted into certificates even when there is a private purchaser.

(2) Is the method of selling on the basis of the lowest interest rate bid the best method of selling which can be devised? Of course, if there are no bidders at sales or if there are only a few bidders at the maximum rate this question is unimportant; but the Model Law is based on the assumption that in normal times there will be a substantial number of competitive bidders, and it is in the light of this assumption that the provision must be discussed.

It is a political axiom in this neck of the woods that "you ought to feed everybody out of the same spoon." It is no doubt true that this classically colloquial phrase has been the constant cry of demagogues, and by this association its social and intellectual standing has suffered. But if the demagogues have been attracted by its effectiveness, the people have been attracted by its essential wisdom. Only in the manner of its application is there real room for argument.

It is true that you can and ought to discriminate between the man who pays his taxes promptly and the man who delays his payment. However, is it wise to provide deliberately for a difference in treatment for two taxpayers who, in point of time, are equally delinquent? Whether the interest rates proposed by the Model Law

[4] See Upson, *Tax Delinquency: Administration and Legislation*, 1934 PROC. NAT. TAX ASS'N 356, 362-363; Wager, *The Reversion of Tax Delinquent Lands*, *id.* 367, 368, 369; discussion by Simeon E. Leland, 1935 *id.* 267.

are too high or too low is not a question now being raised. The only question is whether or not there is potential unwarranted discrimination in the competitive interest rate bidding. That there is at least a potential difference in treatment can hardly be denied.

The majoriy of the League's committee frankly approve this difference in treatment. Its chairman has said that this is the form of sale "universally approved." He has also said: "Competition on the basis of the interest rate, however, seems to have been productive of the best results, both from the standpoint of the taxpayer and the taxing district."[5] The writer has known numerous delinquent taxpayers who would accept this conclusion only at the point of a pistol and then only with such mental reservations as any man is allowed under such circumstances.

Wherever delinquency is common enough to be a political issue, as it has been and still is in many places, taxpayers will object vociferously if they have to pay 10% or 12% when their equally delinquent neighbors are paying 6% or 8%. Can it be said, because a taxpayer owns a less desirable or less productive property than his neighbor, that he has no legitimate reason to protest such a situation? Of course, the law does not carry out the principle of reducing interest in proportion to desirability of risk with complete logic, because, while some mediocre risks may be purchased by private bidders at 12%, the worst risks will fall to the taxing districts at 10%. But, in its broadest aspects, the Model Law is designed to graduate the interest rate in accordance with desirability of the risk.

This type of competition may well serve to accentuate any disadvantages or discrimination already present in the property tax system or in the valuations placed on individual properties. If a parcel has been mistakenly overvalued by comparison to neighboring property, then its owner, if his taxes become delinquent, will probably pay a higher rate of interest than his equally delinquent neighbors. If a parcel is vacant the owner will probably pay a higher rate of interest than the equally delinquent owners of improved properties. Obviously, instead of attempting to mitigate hardships and inequalities in our system we are simply making them more apparent and unjust.

It seems at least arguable that, where popular psychology is ripe for such doctrine, the taxpayer who claims that he is being fed from a different spoon will have enough of truth behind him to enable him to make trouble. Further, it seems at least arguable that even if he cannot cause serious trouble, his cause is yet sound enough to entitle him to consideration. A possible alternative to the Model Law provision is sale to the highest bidder, with the surplus over the tax liens reverting to the owner, with a fixed rate of interest applying to the amount of the liens and a much lower rate of interest applying to the surplus amount. In effect the bidders will still

[5] Frye, *Tax Delinquency and Tax Collection*, an address delivered before the University of Virginia Institute of Public Affairs, July 9, 1935.

bid on a yield basis, while the taxpayers will be accorded much more equal treatment than they would be accorded under the Model Law.[6]

Another possible alternative would be the sale at a fixed rate of interest to the first person who will bid the amount of the liens. This, of course, would have the virtue of placing all taxpayers on an identical basis, though concededly it might result in some confusion and favoritism, and would destroy any vestige of competitive bidding, which still seems to be regarded as desirable by most authorities.[7]

(3) Will the provision allowing the sale to be postponed from the first to the third October in cases where the liens amount to less than $10, result where followed in positive encouragement to delinquency on the part of small land owners? Obviously it is difficult to give a definite and final answer which will fit all cases. It is probably desirable, from the practical standpoint, to allow some leeway in the matter of foreclosure of small tax liens, so that the cost of foreclosure will not be disproportionate to the amount of the lien. However, it does not seem altogether certain that the method proposed by the Model Law is the most desirable method.

The tax sale itself is comparatively inexpensive, particularly if, as suggested by the writer, the cost of issuing a certificate can be eliminated at least in cases where the taxing unit is purchaser. The Model Law places no statute of limitations on the right to foreclose; nor does it require that all certificates held by a taxing unit for the same year must be foreclosed at the same time. Therefore, there is nothing to prevent the certificate holder (which in most cases of small liens will be the taxing district) from allowing several years' taxes to accumulate before bringing foreclosure actions. Would not this serve the same purpose as the proposed provision allowing waiver of sale? If so, it would have the very definite advantage of allowing the matter to be handled by a quietly effected policy, whereas under the waiver of sale method it would immediately be apparent that small liens were not being sold. This should at least minimize the possibility of encouraging delinquency on small items.

Either the Model Law provision or the suggested alternative may involve discrimination, though because it would work in favor of small taxpayers there seems little likelihood that such discrimination would cause serious trouble. However, even if the principle of the Model Law provisions is retained, many units having a preponderance of small taxpayers may desire to have the amount reduced to something less than $10.

(4) Is it wise to incorporate all liens against the same property in the same certificate? It appears from the footnotes appended to the draft of the Model Law

[6] From a footnote to section 27 of the Model Law, it appears that one member of the committee favored sale to the highest bidder as distinguished from bidding on the interest rate. (1935) 24 NAT. MUN. REV. (Supp.) at 299.

[7] In practice in North Carolina in the last few years, such few private bids as have come to the attention of the writer seem to have been made on this basis, though the statute nominally calls for sale to the highest bidder. See N. C. CODE (Michie, 1935) §8015. However, sale to the person who will bid the amount due has been the law in at least six states. See Wager, *supra* note 4, at 367.

that the committee may hope that the provisions to this effect will encourage consolidation of tax collection functions, but may not necessarily intend that all liens shall be consolidated for certificate purposes when there is no other consolidation of collection functions.[8] If such is the case, the writer is in thorough accord with the general purpose. Further, he is in accord with the idea that all collection functions should be consolidated. However, when primary collection functions have not been consolidated, there may be numerous individual situations in which an attempt to consolidate the liens for sale purposes will lead to great confusion. Of course, foreclosures could be jointly conducted even though liens are not consolidated for certificate purposes. In the absence of a state-wide law consolidating general collection it seems somewhat doubtful that this could be handled adequately on a statewide basis. Perhaps the pressure for this partial consolidation is not as great in North Carolina as in some other states, as in this state in most places counties and cities are now virtually the only agencies collecting real property taxes.

(5) Should there be some form of statute of limitations on the right to foreclose? This question can probably be answered in the negative so far as independent purchasers are concerned. The taxing unit has received its money from them and they can be relied upon to protect their own rights. The possibility that they may foreclose at some time other than that selected by the unit is already inherent in the Model Law, and whatever discrimination may be involved in this possibility is not increased by the ensuing suggestions.

It seems to the writer that some form of statute of limitations is desirable with respect to foreclosures to be brought by taxing districts. The primary purpose of the Model Law is to insure a maximum of collection in a reasonable minimum of time. Attention has already been called to the provisions designed to require prompt sale of certificates by providing for removal of the tax collector from office upon failure to sell within three months of the prescribed time. Yet there is no provision which attempts to insure that the district will foreclose within a reasonable length of time. The only provision which might encourage reasonably prompt foreclosure is that which provides that if a taxing district holds a certificate for two years without beginning foreclosure it must pay the liens of other taxing districts on the same property. However, this would not operate where no other taxing districts are involved. Further, such purchasing district must also pay off the liens if it holds the property for one year after foreclosure, so that the effect of this provision, even if foreclosures are started, would be to encourage the plaintiff district to leave the action pending, without taking judgment, in order to escape the necessity of paying these liens.

Experience, at least in North Carolina, has shown that certificate sales have been delayed throughout the state by statute, by action of local authorities, and in a few cases by injunction. However, while sales have usually been delayed for a few months, foreclosures have been delayed for years. These delays in foreclosure have

[8] See footnote to section 22 of the Law. (1935) 24 NAT. MUN. REV. (Supp.) at 298.

developed despite the fact that North Carolina has a two-year statute of limitations, of the ordinary sort, on the most commonly used type of foreclosure. In fact, the exact status of taxes represented by many old tax certificates is now somewhat problematical.

It may be argued from this experience that a statute of limitations is so ineffective as to be undesirable in a tax foreclosure law. However, it is the opinion of the writer that the North Carolina statute is of the wrong type. Further, it is the opinion of most municipal attorneys in the state that an alternative type of foreclosure is still available in North Carolina and that there is no statute of limitations on it. In the writer's opinion the North Carolina experience proves nothing except that it is ineffective, during years of depression, to place an ordinary statute of limitations on tax foreclosures brought by taxing units. However, the Model Law contains a very salutary type of statute of limitations with respect to tax sales; and the same type of provision might well be extended to foreclosures. For instance, two years after sale might well be fixed as the time for beginning actions, and officials charged with the duty of bringing them might be removed from office for failure to bring them within three months after that time. Indeed, some further provision is probably needed to insure that actions, once brought, will be carried to a final conclusion with reasonable diligence.

Promptness in selling certificates, while having its effect, can never accomplish the desired results if foreclosures are never to be brought or are to be delayed for many years. The preliminaries will be excellent, but the main bout will not be held. In North Carolina, at least, the most drastic concessions made in recent years to delinquent taxpayers have been necessitated not primarily because of delayed sales but primarily because of accumulated delinquencies resulting from delayed foreclosures.[9]

In connection with such a limitation on foreclosure actions as has been suggested it would be necessary to consider, of course, the disposition to be made of the Model Law provisions dealing with small tax liens and dealing with instalment payment of certificates held by the taxing unit. Perhaps it might be desirable to make the limitation three years and eliminate both of these other provisions. However, the three ideas might be satisfactorily adjusted in a variety of ways.

(6) Should there be a sale of the property in the foreclosure proceedings? As already pointed out, both types of foreclosure actions provided by the Model Law culminate in judgment declaring the plaintiff to be owner of the property in fee. In neither case is there a provision for sale; apparently it is thought that the sale of the certificate is sufficient when coupled with the redemption provisions. It seems probable that in the majority of cases going to foreclosure judgment (the property being subject to redemption at any time before final judgment) the expense of advertising and holding a sale would be expense wasted on pure formality. How-

[9] See N. C. Public Laws 1933, c. 181. This statute, together with statutes making concessions in a number of other states, is discussed in St. John, *Real Property Tax Collection Procedure* (June, 1936) 14 TAX MAGAZINE 326. Unfortunately, the article contains several inaccuracies with respect to North Carolina.

ever, within the writer's experience, even during the depression, there have been a few sales in tax foreclosure actions in which the bid was high enough to pay off tax liens and leave something additional for the former owner or other lien holders.

Perhaps all laws should be drawn with the average rather than the exceptional situation in mind. However, it is often easy to insert a provision which does no harm in the average case and provides appropriate treatment for the exceptional case. There will certainly be some cases in which a sale will be desirable or even necessary for fair settlement of the rights of the parties. Would not a reasonable solution be to allow any person having an interest in the property to demand a sale provided only that he guarantee the cost of sale? It is difficult to see how this could prejudice the rights of the plaintiff, whether the plaintiff be a private person or the taxing district; and the exceptional case would thereby be assured the necessary exceptional treatment.

(7) As already mentioned, the Model Law provides that if a taxing district holds a certificate for two years without foreclosing or if, after foreclosing, it holds the property for one year, it shall pay the taxes and charges of all other taxing districts on the same property. Does this provision need clarification? What happens if, within one year after foreclosure, the purchasing district decides that it will be advantageous to sell the property for less than the total of all liens accumulated? What happens when the district holds the certificate for more than two years under an instalment agreement made with the taxpayer? If within a year after foreclosure the purchasing district can find no buyer for the property, is it wise to require it to pay all other liens when it probably has no desire to hold the property?

In view of these questions and others that might be raised, would it not be more desirable to provide simply that the various interested units can negotiate an agreement with respect to the disposition of their various liens? While perhaps the present form of the Law would not prevent such agreements it would certainly discourage them, as other districts would be inclined to refuse to negotiate, secure in the knowledge that sooner or later the purchasing district would have to pay. The effect, wherever the various districts are not coextensive, would be, to some extent, a taxation of the land owners in one district for the benefit of the land owners in another, which seems rather doubtful policy.

A further consideration is injected into the question in states like North Carolina, in which, while county and city taxes are on a parity, special assessments are junior to both.[10] Would the effect of the Law be to require a purchasing county to pay off city assessments which would otherwise be junior to its own taxes?

Finally, as already pointed out, the practical result of the provision, in some cases, might be to induce units to leave foreclosure actions pending indefinitely in order to escape the necessity of paying off liens held by other districts; and during this period the situation would simply become more and more complex.

(8) Is it necessary to require that the certificate be recorded? This is one of the

[10] Town of Saluda v. Polk County, 207 N. C. 180, 176 S. E. 298 (1934).

provisions which Professor Traynor discusses. He says that "the collector's records should show the existence of the lien and constitute sufficient notice to all persons dealing with the delinquent owner. . . . It would seem no more necessary for the purchaser to record the certificate than for the municipality to record the levy of the tax."[11]

The sense of this comment is strengthened by the fact that under the Model Law all redemption payments are made directly to the collector even though the certificate is in private hands. There is, of course, much to be said for a concentration in one office of the records of all liens on real property. However, the necessity of consulting the tax records when searching title cannot be completely eliminated; and particularly is this true under the Model Law, as under its provisions taxing districts purchasing certificates, as distinguished from private bidders, would be under no necessity of recording them and the collector's records would have to be searched in any case.

One other consideration enters into the writer's opinion in this matter. North Carolina has, at present, a law which requires that a record of all tax certificates sold shall be filed in the office of the Register of Deeds, and that upon payment of the certificate it may be cancelled on the Register's records for a fee of ten cents. There is no charge for the original recording, which is not done by the purchaser but by means of a complete record of sales compiled by the collector in a special book which is then filed with the Register.[12] A few of our units still obey this law scrupulously, probably because they fear the effects of failure to do so on subsequently acquired foreclosure titles. However, in the majority of the cases in which the writer has made any investigation of the practice, either the certificate record has never been filed or the filing has been discontinued. In cases in which the record has been filed the entry is seldom, if ever, cancelled upon payment; and lawyers searching title seem to pay little attention to the existence of the record. It is this consistent refusal to secure cancellations and the small attention paid the record by those interested in titles which have led many collectors to discontinue filing the record, which is not only troublesome but involves considerable expense to the taxing unit. It is impossible to say what effect failure to file has on tax titles, as our courts have not been called upon to pass on the point (an indication in itself as to how the matter is generally regarded). However, it can be said very definitely that, as a practical as distinguished from a technical matter, failure to file such a record has not damaged the taxing unit, the taxpayer, the certificate holder or those dealing with the taxpayer.

Of course, the provisions of the Model Law are in many respects not comparable to this North Carolina statute. However, North Carolina's experience seems to show that some types of recording, at least, are an unnecessary and often futile part of the collection process. There is sufficient similarity between the two provisions to cast considerable doubt on the necessity for the Model Law proposal.

[11] See Traynor, *supra* note 2, at 103.

[12] N. C. Code (Michie, 1935) §8017.

COLLECTION OF DELINQUENT REAL PROPERTY TAXES BY ACTION *IN PERSONAM*

EDWARD RUBIN*

The increase in real property tax delinquency has directed attention to the discovery of effective tax collection devices. In turn, consideration of new methods of collection revives the somewhat more ancient problem of the enforcement of real property tax claims by obtaining a personal judgment against the taxpayer.[1] Thus a report of a committee of the National Municipal League contains a model real property tax collection law with a provision that "residents of the state who are owners of real property within the state shall be personally liable for taxes levied against such property, such liability to be enforced by appropriate action as for a debt."[2] In contrast, a report issued by the Committee on Tax Delinquency of the National Tax Association indicates that personal but not real property taxes should be the subject of a judgment *in personam*.[3] Neither report reveals the effect of their respective conclusions on the problem of real property tax collection nor discusses to any great extent the legal implications of their respective provisions relating to the collection of real property tax claims by means of personal judgments. These two related considerations—the practical effect of a given method of tax collection, and the legal questions presented by its adoption and use—deserve scrutiny before the suggestion of either committee is accepted by a taxing unit.

I

An examination of the actual worth to a taxing unit of a collection process which permits the taxpayer to be subjected to a personal judgment for a real property tax,

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[1] Courts were concerned with this method of collection as early as 1826. In Mayor v. McKee, 10 Tenn. 150 (1826), a town tax on lots was held a debt of the taxpayer which could be recovered by an action in the name of the town. A Massachusetts statute, passed in 1789, permitted a tax collector to bring an action for debt for taxes unpaid by a married woman who was unmarried at the time of the assessment or by a taxpayer who had died or moved from the taxing unit. 1 MASS. LAWS 465 (1801).

[2] (1935) 24 NAT. MUN. REV. (Supp.) 297, §20.

[3] The report states: "Taxes and special assessments on real estate should be a lien on the particular parcels of real estate. Seizure of personal property to satisfy real property taxes should not be permitted. Personal property taxes should be a debt and represent a claim against any property, real or personal, of the taxpayer subject to limits of jurisdiction." Fairchild and others, *Report on Tax Delinquency* (1932) PROC. NAT. TAX ASS'N 292, 326, 343.

necessitates a general understanding of what the process is designed to achieve. The gist of this method of collection is that a taxing unit would be permitted by statute to impose a personal liability on taxpayers for real property taxes, institute actions for the tax claims in the nature of an action for debt,[4] pursue these actions to judgment, and finally seek satisfaction of the judgment by proceedings under execution.[5]

From the viewpoint of the taxing unit, if collection methods already available have the same effect as personal judgments, then statutory provision for the collection of real property taxes by obtaining such judgments is at best a multiplication of means. Typical of some of the methods existing in the various states for the collection of delinquent real property taxes are the distraint and sale of personal property,[6] garnishment,[7] and the sale of the real property taxed.[8] Statutes in at least seven states

[4] Although a different result has been reached in some cases, the rule generally stated is that in the absence of statute no personal action will lie for the recovery of a tax claim. See 3 COOLEY, TAXATION (4th ed. 1924) §1329. This rule may be sustained on one or both of the following grounds. First, taxes are not debts in the ordinary sense of the term, and hence impose no personal obligation on the taxpayer. Plymouth County v. Moore, 114 Iowa 700, 87 N. W. 662 (1901); State v. B. & O. R. R., 41 W. Va. 81, 23 S. E. 677 (1895); see Coy v. Title Guarantee & Trust Co., 212 Fed. 520, 522 (D. Ore. 1914). But *cf.* The Dollar Savings Bank v. U. S., 86 U. S. 227 (1873); U. S. v. Chamberlin, 219 U. S. 250 (1911); State and Guilford v. Georgia County, 112 N. C. 34, 17 S. E. 10 (1893); Davie v. Blackburn, 117 N. C. 383, 23 S. E. 321 (1895). *Contra:* Mayor v. McKee, *supra* note 3; see City of Nashville v. Cowan and Brien, 78 Tenn. 168, 171 (1882). This is especially true where the assessment is against the land rather than a charge against the owner. Dreake v. Beasley, 26 Ohio St. 315 (1875); see Phila. Mtge. & Trust Co. v. City of Omaha, 63 Neb. 280, 283, 88 N. W. 523, 524. Second, regardless of the nature of a tax, statutes providing other methods of tax collection are held to exclude collection by an action as for a debt. Plymouth County v. Moore, *supra;* State *ex rel.* Hayes v. Snyder, 139 Mo. 549, 41 S. W. 216 (1897); *cf.* The Dollar Savings Bank v. U. S., *supra;* U. S. v. Chamberlin, *supra.* Statutes in some states expressly permit an action as for a debt to be instituted against the delinquent real property taxpayer. CONN. REV. GEN. LAWS (1930) §1231; DEL. REV. CODE (1915) §§1244, 1245 (Kent and Sussex Counties); Del. Laws 1935, c. 135, §§23, 24 (New Castle County); MASS. ANN. LAWS (Michie, 1933) c. 60, §35; MISS. CODE ANN. (1930) §3122; N. H. PUB. LAWS (1926) c. 66, §42; PA. ANN. STAT. (Purdon, 1931) tit. 72, §§5644, 5645; VT. GEN. LAWS (1917) §917; *cf.* ALA. CODE ANN. (Michie, 1928) §3094; ME. REV. STAT. (1930) c. 14, §28 (action of debt permitted but apparently only the real property assessed is sold at the judgment sale); MICH. COMP. LAWS (1929) §3428.

[5] 1 FREEMAN, EXECUTIONS (3d ed. 1900) §§1, 9, 159.

[6] The power to collect delinquent taxes, regardless of the type of tax, by distraint and sale of the taxpayer's property is "almost as old as the common law." Springer v. U. S. 102 U. S. 586, 593; *cf.* 2 BL. COMM. * 452; 3 *id.* at 8. This method enables the tax collector to seize and sell chattels either belonging to or merely in the possession of the taxpayer. See 3 COOLEY, TAXATION §1344. A statute permitting the distraint of realty is not repugnant to the due process clause of the Fifth Amendment. Springer v. U. S., *supra.* Typical of varying statutory provisions relating to distress and sale are the following: ARK. DIG. STAT. (Crawford & Moses, 1921) §10068; COLO. COMP. STAT. (1921) §7371; DEL. REV. CODE (1915) §§1164, 1257; ME. REV. STAT. (1930) c. 14, §18; MASS. LAWS ANN. (Michie, 1933) c. 60, §§24, 25, 27; VT. GEN. LAWS (1917) §§882; WYO. REV. STAT. (1931) §115-2308. Some states provide for the seizure and sale of personal property in the same manner as under execution. MO. REV. STAT. (1919) §12908; N. C. CODE ANN. (Michie, 1935) §8007. Other statutory provisions are specifically aimed at taxpayers removing from, or owning goods outside, the taxing district. ARK. DIG. STAT. (Crawford & Moses, 1921) §10072; ME. REV. STAT. (1930) c. 14, §18; MO. REV. STAT. (1919) §12908; VT. GEN. LAWS (1917) §882; W. VA. CODE ANN. (Michie, 1932) §776. In Delaware and to a limited extent in West Virginia, the personal property of the tenant of the delinquent real property taxpayer may be distrained and sold. DEL. REV. CODE (1915) §1257 (Kent and Sussex Counties); W. VA. CODE ANN. (Michie, 1932) §778 *et seq.* (to extent that tenant is indebted for rent); *cf.* PA. ANN. STAT. (Purdon, 1931) tit. 72, §5643.

[7] This method is directed against the taxpayer's money, property, or credits in the hands of third persons. See, *e.g.*, ALA. CODE ANN. (Michie, 1928) §3063; GA. CODE (1933) §92-7501; N. C. CODE ANN.

permit imprisonment of a delinquent real property taxpayer.[9] It is apparent that a combination of the foregoing methods would enable a taxing unit to reach practically all of the taxpayer's property within the state, and his person as well. At first glance then, the additional method of a personal action against the taxpayer for real property taxes would seem to result in little advantage to the taxing unit in its efforts to collect taxes within the state.[10] The judgment rendered in the action would probably not be satisfied by payment. The taxing unit could then resort to garnishment, or else sell that real and personal property of the taxpayer which is subject to execution.[11] But as already seen, practically all of such property could be reached in a more summary fashion and without the additional step of instituting a personal action.

Moreover, this additional step might, in the absence of careful statutory draftsmanship, hamper rather than aid the collection of delinquent real property taxes.

(Michie, 1935) §§8004, 8005; W. VA. CODE ANN. (Michie, 1932) §780. The third party is summoned into court and required to disclose whether he is or will be indebted to the taxpayer and whether he has any money, property, or credits belonging to the latter. In some states garnishment is permitted only if the tax collector cannot find property of the taxpayer sufficient to satisfy the taxes due. GA. CODE (1933) §92-7501; N. C. CODE ANN. (Michie, 1935) §8004. It has been stated that this method of collection is not generally utilized. Fairchild and others, *supra* note 3, at 320.

[8] Generally real property taxes are a lien against the property taxed, and real property cannot be sold for taxes due on other lands of the same owner. See 3 COOLEY, TAXATION §1386. But statutory language in some states indicates that the tax sale may include real property other than that taxed. CONN. GEN. STAT. (1930) §1225; N. C. CODE ANN. (Michie, 1935) §§7987, 8010; VT. GEN. LAWS (1917) §896; *cf.* Nickey v. Mississippi, 292 U. S. 393 (1934). As to the various methods for selling tax-delinquent real property, see Allen, *Collection of Delinquent Real Estate Taxes by Recourse to the Taxed Property, supra* p. 399 *et seq.*

[9] CONN. GEN. STAT. (1930) §1225; DEL. REV. CODE (1915) §§1259, 1260 (Kent and Sussex Counties); ME. REV. STAT. (1930) c. 14, §§20, 21; 2 MASS. ANN. LAWS (Michie, 1933) c. 60, §29; N. H. PUB. LAWS (1926) c. 66, §10 *et seq.;* PA. STAT. ANN. (Purdon, 1933) tit. 53, §18819, tit. 72, §5641 *et seq.* (infants and insane cannot be imprisoned); VT. GEN. LAWS (1917) §§885, 913; *cf.* DEL. REV. CODE (1915) (for poll taxes in New Castle County); N. J. COMP. STAT. (Supp. 1925) §208-66d (606) (for personal property, poll, and dog taxes). Imprisonment for delinquent taxes has the warrant of antiquity. See 1 MASS. LAWS 304 (1801) (Act of March 16, 1786); Palmer v. McMahon, 133 U. S. 660, 669 (1890). On the theory that taxes are not debts in the ordinary sense of the term, imprisonment of delinquent taxpayers is held not to violate constitutional or statutory prohibitions against imprisonment for debt. Charleston v. Oliver, 16 S. C. 47 (1881) (license tax); *cf.* Appleton v. Hopkins, 71 Mass. 530 (1855); Rosenbloom v. State, 64 Neb. 342, 89 N. W. 1053 (1902) (license tax); see 1 COOLEY, TAXATION §22. The collector's inability to discover chattels sufficient to meet the tax obligation is a condition precedent to imprisonment in some states. *Cf.* ME. REV. STAT. (1930) c. 14, §20; MASS. ANN. LAWS (Michie, 1933) c. 60, §29. The Massachusetts statute explicitly provides for the discharge of the penurious taxpayer from jail. 2 MASS. ANN. LAWS (Michie, 1933) c. 60, §31. It has been stated that imprisonment of delinquent taxpayers is "probably rarely if ever employed." JENSEN, PROPERTY TAXATION IN THE UNITED STATES (1931) 307. But see (1934) PROC. NAT. TAX ASS'N 385 (Massachusetts uses method of arrest more "generously" than other states).

[10] See Marye v. Diggs, 98 Va. 749, 755, 37 S. E. 315, 317 (1900); State v. B. & O. R. R., *supra* note 4, at 94, 23 S. E. at 681; Traynor, *The Model Real Property Tax Collection Law* (1935) 24 CALIF. L. REV. 98, 105; Note (1931) 44 HARV. L. REV. 1265, 1268. Although the relation is probably not causal, most of the New England states permit personal actions and at the same time New England suffers least from property tax delinquency. *Cf.* Woodworth, *Collection of Property Taxes with Special Reference to Real Estate* (1934) PROC. NAT. TAX ASS'N 330, 333, and note 4, *supra.* Likewise, Mississippi, where an action as for a debt lies, had a delinquency rate well below the 1932-33 average for the country. *Ibid.*

[11] See 1 FREEMAN, EXECUTION §§1, 109, 159; 2 FREEMAN, JUDGMENTS (5th ed. 1925) §§915, 930.

The homestead of a judgment debtor is generally immune from sale for the satisfaction of a judgment,[12] whereas in many states the homestead may be taxed and sold for unpaid real property taxes.[13] If a taxing unit obtained a judgment for taxes due on the homestead, it would seem that in this instance a judgment sale of the homestead should be permitted,[14] but the contrary has been held.[15] Again, statutes may stipulate that the lien for real property taxes on the real property taxed is prior to all other incumbrances;[16] but judgments are usually liens on all the debtor's realty subject to execution from either the date of their rendition or docketing.[17] A taxing unit resorting to a personal judgment might thus find itself enforcing an inferior lien.[18] These difficulties, however, could be eliminated by explicit statutory provisions subjecting the homestead to a judgment sale where the judgment is for real property taxes due on the homestead or on other real property, and making the lien of a real property tax judgment a preferred lien at least on the real property taxed.[19]

This additional method of collecting real property taxes by instituting personal actions may actually expedite delinquent tax collection when employed within the state. The taxing unit may be aided in its sale of the real property taxed. Since the personal action affords the taxpayer the benefit of a less summary procedure, courts may refrain from exposing the judgment sale to the customary rule that tax sales are to be strictly construed against the taxing unit.[20] Furthermore, since all the real property of the taxpayer not exempt from execution is liable to a judgment sale,[21] and since in most jurisdictions tax sales are limited to the real property taxed,[22] taxing units which have obtained personal judgments will be enabled to reach additional sources for the satisfaction of the tax claim. For example, taxpayers with more than one tract of land in the taxing jurisdiction might refuse payment on a given tract with indifference; but their indifference might be dissipated if they

[12] See 2 FREEMAN, JUDGMENTS §§945, 946; THOMPSON, HOMESTEADS AND EXEMPTIONS (1878) §§390, 625 *et seq.*

[13] See, *e.g.*, ARK. DIG. STAT. (Crawford & Moses, 1921) §§5539, 9853, 9858, 10024, 10086; MISS. CODE ANN. (1930) §§1775, 3108, 3120; N. C. CONST. art. V, §5, art. X, §2, and N. C. CODE ANN. (Michie, 1935) §7871 (17).

[14] *Cf.* THOMPSON, *op. cit. supra* note 12, §§385, 386.

[15] Douthett v. Winter, 108 Ill. 330 (1884); *cf.* Ransom v. Duff, 60 Miss. 901 (1883).

[16] See, *e.g.*, ARK. DIG. STAT. (Crawford & Moses, 1921) §10023; ME. REV. STAT. (1930) c. 13, §3; see BLACK, TAX TITLES (2d ed. 1893) §§185, 186.

[17] 2 FREEMAN, JUDGMENTS §915 *et seq.*

[18] The problem is well illustrated by the tax collection statutes in Mississippi. Taxes are given priority over all judgments, executions, encumbrances, or liens, while at the same time taxes are declared a debt recoverable by action. *Cf.* MISS. CODE ANN. (1930) §§3120, 3122. The action, of course, would result in a judgment, but there is no provision that the tax judgment lien enjoys the same preference accorded the tax lien. *Cf.* Douthett v. Winter, *supra* note 15, at 334. But *cf.* Dunlap v. County of Gallatin, 15 Ill. 7 (1853).

[19] See, *e.g.*, DEL. REV. CODE (1915) §1245; Del. Laws 1935, c. 135, §24.

[20] Thus a more lenient attitude was taken in Inhabitants of Town of Milo v. Milo Water Co., 131 Me. 372, 163 Atl. 163 (1932).

[21] See note 11, *supra.*

[22] See note 8, *supra.*

knew that the taxing unit could subject them to suit and then proceed against their other lands.

The other methods of delinquent real property tax collection do not afford the taxing unit a means of reaching property outside of the state. As a result nonresidents burdened with poor investments or speculations in real property situated in the taxing state, may deliberately fail to pay taxes, confident that property of value which they possess elsewhere cannot be reached. Likewise, in some cases residents might be more ready to pay real property taxes if they knew that the taxing unit could satisfy its claim from more highly valued property located outside of the state. Whether collection by actions *in personam* can fill this lacuna in the tax collection system is not subject to unequivocal answer; but the fact that occasions may arise when the taxing unit would find it desirable to seek extrastate collection of its tax claim against residents or nonresidents invites inquiry into the matter.

II

It is apparent then that the collection of real property taxes by means of personal judgments against delinquent taxpayers may present jurisdictional problems. The taxing state[23] may seek a personal judgment, either within or outside of its territorial limits, against one domiciled or resident elsewhere; or, having been awarded a judgment *in personam,* the taxing state may attempt to enforce it elsewhere. Until lately there has been little reason to suppose that either could be done. But several recent decisions in state and federal courts[24] make it necessary to consider once again (1) whether a taxing unit may impose a personal liability for real property taxes on nonresidents (a term which will be used herein as synonymous to non-domiciliaries[25]), and (2) whether a taxing unit which has obtained a personal judgment for real property taxes may enforce it elsewhere.

A preliminary difficulty in the extrastate collection of taxes is occasioned by the principle that local tax collection officers are "without authority, in their official capacity, to sue as of right" in the federal or state courts in another state.[26] This doctrine, however, does not necessarily preclude a tax collector from instituting an action in another state. The state where collection is sought may permit the foreign tax collector to sue not as a matter of right but as a matter of judicial or statutory grace. Further, the taxing state may empower its tax collector to institute an action

[23] The term "taxing state" is used here to include lesser taxing units such as counties or municipalities.

[24] *Cf.* Moore v. Mitchell, 281 U. S. 18 (1930); Nickey v. Mississippi, 292 U. S. 393 (1934); Milwaukee County v. M. E. White Co., 56 Sup. Ct. 229 (1935); Nickey v. State, 167 Miss. 650, 145 So. 630, 146 So. 859 (1933); State v. Baker, 35 N. M. 55, 289 Pac. 801 (1930).

[25] A citizen of the United States is a citizen of the state in which he is domiciled, and in most cases one is actually domiciled and resident in the same state. The state of domicil has the power to tax a nonresident domiciliary. See 1 BEALE, CONFLICT OF LAWS (1935) 525. And a state may impose a personal tax on a non-domiciliary who is resident within the state for a substantial portion of the taxing period. *Cf.* Haavik v. Alaska Packers' Ass'n, 263 U. S. 510 (1924) (personal tax imposed by Alaska).

[26] *Cf.* Moore v. Mitchell, *supra* note 24, at 24.

qua individual rather than in his official capacity.[27] And finally, the taxing unit might institute the action in its corporate capacity.[28]

In its attempt to obtain a tax judgment *in personam,* the taxing state may proceed in either of two possible places—within the taxing state and outside it. Likewise the taxing state may seek such a judgment against two types of taxpayers—residents and nonresidents. Four possible combinations are thus presented, and they will be examined in increasing order of complexity. The combinations raise three issues as yet unamenable to categorical answer. First, may a taxing unit impose a personal obligation for real property taxes on a nonresident? Second, may it institute an action to enforce such an obligation within the taxing state? Finally, may it do so outside the taxing state?

(1) *Action within the taxing state against a resident thereof.* The power of a taxing state to impose a personal obligation for real property taxes on a resident is unquestioned.[29] For the proceedings to enforce this obligation, the domicil of the resident may serve as a basis for jurisdiction over his person.[30] To comply with the Fourteenth Amendment of the Constitution it is only necessary that reasonable notification be given him of the pendency of the action.[31]

(2) *Action outside the taxing state against a resident thereof.* Where the taxing state elects to institute the action on the real property tax claim in another jurisdiction, two current doctrines may militate against the validity of such a collection process. Although the Supreme Court of the United States has not ruled on the matter,[32] it is frequently stated and less often decided that one state will not enforce the revenue laws of another by entertaining actions for foreign tax claims.[33] North Carolina has recently demonstrated a more friendly attitude in a statute which provides that the courts of North Carolina "shall recognize and enforce liabilities for taxes lawfully imposed by other states which extend a like comity" to North Caro-

[27] *Cf.* RESTATEMENT, CONFLICT OF LAWS (1934) §§394, 395, 396 (extrastate suits by personal representatives); MASS. ANN. LAWS (Michie, 1933) c. 60, §35 (collector may maintain action in own name in same manner as for own debt). The collector would, of course, have the duty of returning the sum collected to the taxing unit.

[28] This was done in Milwaukee County v. M. E. White Co., *supra* note 24.

[29] See 3 COOLEY, TAXATION, §1327.

[30] RESTATEMENT, CONFLICT OF LAWS §79.

[31] The taxing state is not limited to obtaining personal service on the resident while present in the state in order to institute the action, but where such service is impossible, service at the taxpayer's residence or by publication will suffice. See Scott, *Jurisdiction over Nonresidents Doing Business Within a State* (1919) 32 HARV. L. REV. 871, 875, n. 25.

[32] See Milwaukee County v. M. E. White Co., *supra* note 24, at 233.

[33] The cases are collected and the policy and history underlying the rule are considered in a note in (1929) 29 COL. L. REV. 782. See Leflar, *Extrastate Enforcement of Penal and Governmental Claims* (1932) 46 HARV. L. REV. 193, 215 *et seq.;* Legis. (1935) 48 HARV. L. REV. 829. It has been contended that "the possibility of extrastate suits on tax claims being permitted" may not be remote. See Leflar, *supra* at 221. But *cf.* Legis. (1935) 48 HARV. L. REV. 828, 830. And it has also been asserted that "no appellate court has squarely accepted" the maxim that one state does not enforce the revenue laws of another. See (1930) 30 COL. L. REV. 402. However, that constitutional compulsion will be exerted to compel the entertainment of such actions is more doubtful. *Cf.* (1936) 49 HARV. L. REV. 490, 491.

lina.[34] In the field of death taxes, other states have statutory provisions for the reciprocal enforcement of tax claims,[35] but the North Carolina enactment is solitary in encompassing all tax claims.[36] Further, the taxing state may find access to the courts of another jurisdiction barred by the doctrine of *forum non conveniens* which is invoked when the forum considers itself an inconvenient tribunal to entertain a given action.[37] Where the suit involves both a nonresident taxpayer and taxing state, the forum may perhaps properly consider itself unqualified to determine the cause.

(3) *Action within the taxing state against a nonresident thereof.* The taxing state in this situation is confronted by the oft-reiterated dogma that a state cannot constitutionally impose a personal liability against a nonresident for property taxes.[38] This doctrine is alleged to find its sanction in *Dewey v. Des Moines,* a United States Supreme Court decision containing language which sustains the broad proposition that a statute imposing personal liability for property taxes on a nonresident would violate the due process clause of the Federal Constitution.[39] The doctrine has been succinctly stated in an opinion of a New York lower court,[40] quoted with approval

[34] N. C. Pub. Laws 1935, c. 371, §511; *A Survey of Statutory Changes in North Carolina in 1935* (1935) 13 N. C. L. REV. 355, 405 *et seq.* (criticism of statute). An earlier North Carolina case had enforced a New Jersey tax claim without reference to reciprocity. Holshouser v. Copper Co., 138 N. C. 248, 50 S. E. 650 (1905).

[35] Legis. (1935) 48 HARV. L. REV. 828; *cf.* Cole, *The Fiscal Effects of the Recent Decision in the Estate of Alice C. Martin* (1930) PROC. NAT. TAX ASS'N 296, 297.

[36] *Cf.* Legis. (1935) 48 HARV. L. REV. 828, 834. The note-writer presents a statute more detailed than North Carolina's, and posited on the proposition that a state should permit the "collection of all tax claims of a sister state where such state does not affirmatively refuse [by statute of decision] to allow suits by other states for taxes, instead of requiring reciprocity." *Ibid.* One provision in the suggested statute may cause difficulty. Section 5 allows the forum to refuse to apply the act where (a) the taxing state has not first endeavored to collect the tax within its own bounds, or (b) the tax in question is opposed to the public policy of the forum, or (c) the taxing state affirmatively denies to other states the power to collect taxes in its courts. This section may be held repugnant to the full faith and credit clause where the action is on a foreign tax judgment. *Cf.* Milwaukee County v. M. E. White Co., *supra* note 24; Fauntleroy v. Lum, 210 U. S. 230 (1908). Whether the North Carolina or the proposed staute is of any value whatsoever in the collection of real property taxes against nonresidents depends on a question to be considered subsequently—the personal liability of nonresidents for real property taxes.

Rather than await uniform state legislation, conceivably Congress, pursuant to that part of the "full faith and credit" clause which enables it to prescribe the effect of the acts of one state in another, could pass a statute requiring one state to entertain actions on tax claims instituted in another. See Cook, *The Powers of Congress under the Full Faith and Credit Clause* (1919) 28 YALE L. J. 421, 432 *et seq.* Likewise, Congress might confer jurisdiction on the federal courts of actions on tax claims by one state against citizens of another. U. S. CONST. Art. III, §2, Art. XI. This may be the ultimate effect of Milwaukee County v. M. E. White Co., *supra* note 24. See (1936) 3 U. OF CHI. L. REV. 500, 502.

[37] Blair, *The Doctrine of Forum Non Conveniens in Anglo-American Law* (1929) 29 COL. L. REV. 1 *et seq.; cf.* Leflar, *supra* note 33, at 218.

[38] See 1 BEALE, CONFLICT OF LAWS 532.

[39] 173 U. S. 193, 202 (1899). See Note (1931) 44 HARV. L. REV. 1265. The doctrine finds a corollary in the view that a tax on income received by a nonresident from sources within the state may only be satisfied from property therein. See GOODRICH, CONFLICT OF LAWS (1927) 68.

[40] New York v. McLean, 57 App. Div. 601, 606, 68 N. Y. Supp. 606, 612 (1901), *aff'd,* 170 N. Y. 374, 63 N. E. 380 (1902).

by Professor Beale:[41] "Although a State has the power to levy a tax upon personal [or real] property of a nonresident situated within its boundaries and subject to its jurisdiction, and for that purpose may separate the situs of the owner from the actual situs of the property within the State, yet it can only enforce the payment of that tax by virtue of its jurisdiction over the property, and it has not by virtue of that jurisdiction any power to subject the owner of it to a personal liability for the tax."

But why nonresidence of the taxpayer should act as a limitation on the taxing state's power to impose a personal obligation on him has not been revealed by those asserting the existence of the doctrine.[42] A more reasonable rule would permit a state to make nonresidents personally liable for property taxes and thus prevent discrimination against the state's own citizens.[42a] Resident and nonresident taxpayers alike have benefited as owners from the protection and services accorded their property by the state.[43] Moreover, it is not asserted by Professor Beale and others who accept the broad doctrine of the *Dewey* case that residence or even presence within a state or actual consent to its jurisdiction is essential to enable that state to impose a personal obligation. It suffices that the defendant has "subjected himself to the exercise of its jurisdiction."[44] If a nonresident acquires land in a state imposing a personal liability for real property taxes, if he receives its rents and profits, is there any reason why he cannot be held to have subjected himself to its jurisdiction as to any obligation based on landownership? And even if the law imposing this liability were to have been enacted after the acquisition of the land and even though the land itself were unoccupied and untilled, should those facts permit him to escape such an obligation? Carried to its logical extreme, the theory of the *Dewey* case would relieve an absentee landowner of all personal duties based upon landownership. Yet is it conceivable that a state would be denied legislative jurisdiction to

[41] Beale, *Jurisdiction to Tax* (1919) 32 HARV. L. REV. 586, 590; 1 BEALE, CONFLICT OF LAWS 533. The doctrine has also been acknowledged by the draftsmen of the Model Real Property Tax Law which imposes a personal liability for real property taxes only on residents. See note 2, *supra.*

[42] Professor Beale has dressed the doctrine in logical garb. See Beale, *Jurisdiction to Tax* (1919) 32 HARV. L. REV. 587, 589. "No sovereign may lay a personal tax upon a person or corporation not domiciled within the territory," runs the argument. *"For this reason* he cannot impose upon such a nonresident a personal obligation to pay a tax levied upon property within the state." (Italics added.) In Professor Beale's treatise, however, premise and conclusion appear as two distinct rules of law. See 1 BEALE, CONFLICT OF LAWS 532.

[42a] *Cf.* Traynor, *supra* note 10 at 105.

[43] *Cf.* RESTATEMENT, CONFLICT OF LAWS, §452: "The law of a place where a benefit is conferred determines whether the conferring of the benefit creates a right against the recipient to have compensation." The obligation to pay taxes is termed quasi-contractual in the Milwaukee County Case, *supra* note 24, at 231.

[44] RESTATEMENT, CONFLICT OF LAWS, §47. It is significant that the theory of subjection to jurisdiction is one which has been evolved by the commentators subsequent to the Dewey case, although it is based in part upon decisions antedating that case, which had been rested on a fiction of consent to jurisdiction. It is important to note in this connection that the problem under consideration here relates only to the state's "legislative jurisdiction" to impose a duty (*cf. id.* §§55, 60, 62, 70) and not to the state's "judicial jurisdiction" to enforce that duty. The broad doctrine of the Dewey case is a denial of *legislative* jurisdiction; the narrow ground of decision therein is a justifiable denial of *judicial* jurisdiction over the defendant in that particular case. The problem of judicial jurisdiction over nonresident delinquent taxpayers is discussed *infra*, p. 426.

impose a personal liability upon such a landowner who, by careless inaction, had permitted property owned by him therein to fall into disrepair, with consequent injury to a passer-by?[44a] There is no greater theoretical difficulty in imposing a personal duty to pay real property taxes than there is to impose a personal duty to use due care in the maintainance of property: in both cases ownership of a particular tract of land is an operative fact in the cause of action; in neither is it resorted to merely to give color of jurisdiction to impose an unrelated obligation.

It is difficult to reconcile the broad proposition to be derived from the *Dewey* case with the logical implications of the United States Supreme Court's opinion in the recent case of *Nickey v. Mississippi*.[45] In that case nonresidents of Mississippi, who owned several tracts of land therein, failed to pay taxes on one of these tracts, and were sued in a Mississippi chancery court to recover the unpaid taxes as a debt. The suit was commenced by attaching the defendants' Mississippi lands on which taxes had been paid. On appeal from a decree for the state, the defendants contended in part that the decree, so far as it purported to adjudicate any right of the state to satisfy the tax liability out of other lands in the state, or to impose a personal liability for the tax, violated the due process clause of the Fourteenth Amendment. The Supreme Court affirmed the decree below, Mr. Justice Stone stating: "The power to collect the tax from property within the state is always exercised at the expense of the owner, even though a nonresident, and an obligation *in rem* is thus imposed on his ownership, which is within the control of the state because of the presence there of the physical objects which are the subject of ownership. As it is an incident of property that it may be made to respond to *obligations to which its owner may be subject,* no want of due process is involved in satisfying an obligation imposed upon the ownership of one item of property by resort to another which is subject to the same ownership."[46]

The Court declared it unnecessary to decide whether the defendants were personally liable to pay the tax.[47] The fact that the Court treated the question of the nonresident's liability as open is significant in light of the *Dewey* case which has been regarded as having closed it. Moreover, the recognition of the state's power to attach land other than that taxed may be interpreted as implicitly acknowledging the power of the state to impose a personal liability on the nonresident. If, as is the case in Mississippi, real property taxes are a lien only on the tract of land assessed,[48] then the sole basis for an attachment of the owner's other property must be that the owner is personally obligated to pay the taxes, for *ex hypothesi* the other

[44a] No cases are available on the point; indeed, it is unlikely that court or counsel would even recognize the existence of a problem of legislative jurisdiction if such a case were to arise. *Cf.* Le Forest v. Tolman, 117 Mass. 109 (1875), approved in RESTATEMENT, CONFLICT OF LAWS, §379, Comment F.

[45] 292 U. S. 393 (1934).

[46] *Id.* at 397 (italics added).

[47] Since the defendants appeared generally, gave a $10,000 bond to secure the release of the attached lands, and the decree was for a sum less than the bond, the Court regarded the latter as a procedural substitute for the lands in the state. *Ibid.*

[48] MISS. CODE ANN. (1930) §3120.

lands are not liable.[49] The italicized passage in the quotation from the *Nickey* case above suggests that Mr. Justice Stone did not escape the necessity of postulating this personal obligation as a premise to his conclusion. In any event it is but a short step from a recognition of a tax liability which may be satisfied out of a nonresident's non-delinquent land within the state to a liability enforced by an action *in personam* against the nonresident, assuming jurisdiction over his person is properly obtained.

Aside from the *Dewey* case, authority does not warrant the assumption that a state cannot obtain a personal judgment for real property taxes owed by a nonresident. Only one case seems specifically to have denied an attempt to reduce a real estate tax to judgment against a nonresident.[50] Further, the narrow holding of the *Dewey* case is merely that where a local improvement assessment is itself in the nature of a judgment, a personal obligation to pay the assessment may not be placed on a nonresident not served with process within the taxing state, nor making a voluntary appearance in the assessment proceedings, nor consenting to the jurisdiction of the taxing state over his person.[51] Subsequent cases have held that a notice of and a hearing in the assessment proceedings are not essential as long as the assessment may be contested before final liability for the tax is determined.[52] Thus if the broader proposition of the *Dewey* case is disregarded, and later state decisions have done so,[53] the taxing state has the constitutional power to impose a personal liability

[49] On the other hand, it may be argued that the Nickey case leaves unaltered the doctrine that a state cannot impose a personal liability for property taxes against a nonresident. A state could expressly provide by statute that taxes on one tract of land are a lien against all of the taxpayer's real property within the state. See note, 8, *supra*. And the Supreme Court in the Nickey case may have regarded the Mississippi law as in effect imposing, in addition to the lien on the tract taxed, a secondary lien on the owner's other realty, arising only upon attachment thereof. *Cf.* Shaffer v. Carter, 252 U. S. 37 (1920); Travis v. Yale & Towne Mfg. Co., 252 U. S. 60 (1920).

[50] Town of Winchester v. Stockwell, 75 N. H. 322, 74 Atl. 249 (1909). The New Hampshire court in a brief opinion denied the taxing unit the power to bring assumpsit despite a statutory license to collect any tax by a suit at law. See N. H. Laws 1881, c. 28. Early cases merely found as a matter of statutory construction that the tax was a lien against the land, and not a personal charge against the nonresident taxpayer. *Cf.* Rising v. Granger, 1 Mass. 47 (1804); Dewey v. Stratford, 42 N. H. 282, 286 (1860); Cocheco Mfg. Co. v. Strafford, 51 N. H. 455, 471 (1871); Bowers v. Clough, 55 N. H. 389 (1879). With the exception of Dewey v. Des Moines, 173 U. S. 193 (1899), and City of New York v. McLean, 170 N. Y. 374, 63 N. E. 380 (1902) (considered *infra* note 53), the cases cited in 3 Cooley, Taxation §1333, n. 17, do not support the proposition that nonresidents are not personally liable for taxes but are confined to the construction of the particular tax statutes. *Cf.* Herriman v. Stowers, 43 Me. 497 (1857); Dow v. Inhabitants of First Parish in Sudbury, 37 Mass. 73 (1842); Graham v. Township of St. Joseph, 67 Mich. 652, 35 N. W. 808 (1888); City of St. Paul v. Merrit, 7 Minn. 258 (1862); Catlin v. Hull, 21 Vt. 152 (1849).

[51] *Cf.* Bristol v. Washington County, 177 U. S. 133, 146 (1900).

[52] Wells, Fargo & Co. v. Nevada, 248 U. S. 165 (1918); Nickey v. Mississippi, *supra* note 24.

[53] Greenbaum v. Commonwealth, 147 Ky. 450, 144 S. W. 45 (1912); Collector of Taxes v. Rising Sun Street Lighting Co., 229 Mass. 494, 118 N. E. 871 (1918) (foreign corporation doing business in the state); State v. Baker, 35 N. M. 55, 289 Pac. 801 (1930), *cert. den.* 282 U. S. 807 (1930); *cf.* Nickey v. State, 167 Miss. 650, 145 So. 630, 146 So. 859 (1933); *aff'd* sub. nom. Nickey v. Mississippi, 292 U. S. 393 (1934). *Contra:* City of New York v. McLean, 170 N. Y. 374, 63 N. E. 380 (1902) *semble; cf.* New York v. Mason-Au, etc. Co., 64 Misc. 405, 119 N. Y. Supp. 472 (1909). The McLean case has been distinguished on the ground that the New York statute only applied to residents. See Greenbaum v. Commonwealth, *supra* at 454, 144 S. W. at 48; State v. Baker, *supra* at 289 Pac. at 802; Traynor, *supra* note 10, at 104. In another case subsequent to the Dewey case, Scottish Union & Nat. Ins. Co. v. Bowland, *supra* note 6 (tax on bonds), the United States Supreme Court, as in the Nickey case, found it unnecessary to state whether personal liability for a property tax may be imposed on a nonresident,

on the nonresident, provided that in the proceeding enforcing such liability there has been service of process in, or a voluntary appearance in, or a consent to the jurisdiction of, the taxing state. In other words, the constitutional power to impose the personal liability is present; but to assert the power by instituting an action *in personam,* it is necessary, as in the case of any other personal action, for the taxing state to acquire personal jurisdiction over the nonresident.

The usual bases of such jurisdiction over nonresidents, namely, personal service within the state and voluntary appearance in the action, will frequently be of little value in the case of the nonresident delinquent taxpayer who may be expected to avoid entry into the taxing state if an action is threatened. Nor is it likely that he will perform acts sufficient to evidence express consent to its jurisdiction. On the other hand, a state may provide that the doing of an act within its territory is tantamount to consent to the personal jurisdiction of the state.[54] Actually, of course, there is no consent. The state has exercised its regulatory power by providing that the doing of certain acts will result in the state's acquiring personal jurisdiction over the actor; and such regulations have been held reasonable in cases where a strong public interest presents the need for personal jurisdiction[55]—a factor which also exists where nonresidents have failed to pay property taxes. In order not to transcend the requirements of the due process clause of the Fourteenth Amendment, the taxing state will, of course, have to devise means reasonably calculated to give the nonresident notice of the pendency of the action for the unpaid real property taxes.[56]

(4) *Action outside the taxing state against a nonresident thereof.* Taxing units will not often venture beyond their territorial confines in order to institute actions on property tax claims if they have means available to compel nonresidents to appear in suits instituted within the taxing state. For an action to be commenced outside of the taxing state, however, it is necessary that a nonresident may be subjected to a personal obligation for property taxes. It is necessary that states, either by statute or as a matter of judicial comity, forsake their reluctance to entertain actions for foreign tax claims.[57] It is necessary, finally, that the action should not be precluded

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although both these decisions permit a state to proceed by an action *quasi in rem* for property taxes due it by nonresidents. Nickey v. Mississippi, *supra* (tax on lands).

[54] Hess v. Pawloski, 274 U. S. 352 (1927); Doherty & Co. v. Goodman, 294 U. S. 623 (1935). This power is said to exist because the state may constitutionally condition the doing of an act within its territory by requiring actual consent, and hence the state may regard the act itself as consent. *Cf.* RESTATEMENT, CONFLICT OF LAWS §§84, 85.

[55] *Cf.* Hess v. Pawloski, *supra* note 54 (where nonresident motorist causes injury); Doherty & Co. v. Goodman, *supra* note 54 (sale of securities); see Scott, *supra* note 31, at 886 *et seq.* Where the nonresident is a foreign corporation doing business with the state, it may be argued that since a state may exclude a foreign corporation not employed by the federal government nor engaged in interstate commerce, it may constitutionally condition the corporation's entrance by subjecting it to jurisdiction *in personam* for unpaid real property taxes. *Cf.* Collector of Taxes v. Rising Sun Street Lighting Co., *supra* note 53 at 497, 118 N. E. at 873; 1 BEALE, CONFLICT OF LAWS 533. It may also be contended that the doing of business by the foreign corporation is equivalent to residence and therefore, as in other cases where residents are involved, the taxing state has power to impose a personal liability.

[56] RESTATEMENT, CONFLICT OF LAWS §75. As to means which might be considered reasonable, see Hess v. Pawloski, *supra* note 54, and Scott, *supra* note 31, at 875 *et seq.*

[57] As already suggested, it may be that states will be compelled to entertain such actions. See note 33, *supra.*

by the use of the doctrine of *forum non conveniens*. The latter, as already suggested, is most likely to be employed where the taxing unit brings an action in a foreign state other than the state of domicil, since such a suit involves both a foreign taxpayer and taxing unit.

III

If the taxing state is permitted to reduce its claim for real property taxes to judgment in an action brought in its courts, then, in the case of a nonresident taxpayer, the taxing state's power to enforce the judgment thus obtained in the state of his residence becomes of the utmost importance.[58] And this may also be true of a resident whose property is situated elsewhere. This problem is virtually resolved in favor of the taxing state by the recent decision of *Milwaukee County v. M. E. White Co.*,[59] holding that a tax judgment obtained in the taxing state should be enforced in the federal court in another state. The decision leaves little doubt but that tax judgments will be entitled to the same protection which the full faith and credit clause of the Federal Constitution[60] accords judgments on simple contract debts.[61]

The state where an action on the tax judgment is instituted may be adversely affected thereby in at least two ways. If it finds but little occasion for extrastate enforcement of its own tax judgments, the business of its courts may be increased without any compensating advantage.[62] And although foreign judgments have no greater prestige than judgments on simple contract debts and would be inferior to the tax claims of the forum,[63] collection of domestic taxes may be hampered by

[58] The lack of many cases on the question of the personal liability for property taxes has been "largely attributed to the fact that a decision one way or the other would but slightly affect the enforceability of taxes *within* the taxing state." Note (1931) 44 HARV. L. REV. 1265, 1268 (italics added). To the extent that the nonresident's combined tangible personality and real property within the taxing state suffice to meet real property tax claims, extraterritorial enforcement of the claim becomes unnecessary. Where a tax other than a tangible personal or real property tax is imposed, it seems conceded that such enforcement will prevent escape from taxation. See Stone, J., dissenting, in Baldwin v. Missouri, 281 U. S. 586, 598 (1930); Leflar, *supra* note 33, at 215.

[59] 56 Sup. Ct. 229 (1935). The case involved a judgment recovered in a Wisconsin state court by Milwaukee County against an Illinois corporation for income taxes, interest, and a 2% penalty.

[60] U. S. CONST. Art. IV, §1.

[61] See (1936) 49 HARV. L. REV. 490. Prior to Milwaukee County v. M. E. White Co., *supra* note 59, commentators differed whether foreign judgments based on tax claims would be enforced in the courts of other states and in the federal courts. See 2 BEALE, CONFLICT OF LAWS (1935) 1410; 2 BLACK, JUDGMENTS (2d ed. 1902) §870; Hazelwood, *Full Faith and Credit Clause as Applied to Enforcement of Tax Judgments* (1934) 19 MARQUETTE L. REV. 10; Traynor, *supra* note 10, at 105; Note (1933) 42 YALE L. J., 1131. The Restatement of the Conflict of Laws, §443, took the position that "a valid foreign judgment for the payment of money which has been obtained in favor of a state, a state agency, or a private person, on a cause of action created by the law of the foreign state as a method of furthering its own governmental interests will not be enforced." Foreign judgments on tax claims are included within this section.

[62] See Leflar, *supra* note 33, at 218, 219. In this connection it is interesting to note that New York, a state to which movable property might frequently be sent, permits the collection of death taxes owed to other states if such states allow collection of New York death taxes. *Id.* at 219. In the end it may be that the use of the courts of another state by the taxing state will be occasional, or that the states will make an approximately equal use of each other's courts to enforce tax judgments. *Cf.* Cole, *supra* note 35, at 301.

[63] Milwaukee County v. M. E. White Co., *supra* note 59, at 234.

either increasing the rate of tax delinquency in the forum or, in some cases, by completely frustrating collection. Residents of the forum, after satisfying a sister state's real property tax judgment enforced in the forum, might lack the funds or the inclination to meet the tax obligation due the forum.

Since the original judgment in the *Milwaukee County* case included a penalty of only two per cent, and since delinquent real property tax penalties are often much higher, states averse to entertaining actions on foreign real property tax judgments may perhaps avoid enforcing so much of the judgment as embodies the penalty on the ground that a penal claim is not entitled to full faith and credit in other states.[64] In view of the *Milwaukee County* case, however, it is questionable whether a delinquent tax penalty may be properly termed a penal claim.[65] Further, tax penalties incident to a franchise tax have been likened to liquidated damages for the breach of an ordinary contract.[66] But if the tax penalty be considered a penal claim, the same holding should follow where a statute, instead of imposing a penalty for delinquent real property taxes, adds an equally severe interest charge to the unpaid tax claim.[67]

CONCLUSION

The foregoing discussion has revealed that the legal impediments to the extrastate collection of delinquent real property taxes by actions *in personam* may not be insurmountable. The use of this collection method within the state will require in most cases explicit statutory provision and careful draftsmanship. Further, to permit a taxing unit to obtain personal judgments might as a practical matter in situations already suggested aid the collection process. But to generalize about the employment of a given tax collection process by numerous and diverse taxing units is a foolhardy pursuit. In the last analysis it may be that "the mental attitudes and the economic and legal status of the owners will introduce variations in the kinds of remedial measures which may be necessary to enforce collections, and in the reactions of the owners to those measures."[68]

[64] See Huntington v. Attrill, 146 U. S. 657 (1892); GOODRICH, CONFLICT OF LAWS 472.

[65] Language in Wisconsin v. Pelican Ins. Co., 127 U. S. 265, 290 (1888) suggests that a tax penalty might be considered a penal claim. But in the Milwaukee County case, *supra* note 59, at 235, Mr. Justice Stone expressly refused to disclose whether a judgment for a penal claim must be given full faith and credit. Nor did he concern himself with the nature of tax penalties in general but rather was content to state that the findings of the Wisconsin court "indicate that the judgment included interest and a 'penalty' of 2 per cent for delinquency in payment, but the record does not disclose that the penalty arose under a penal law or is of such a nature as to preclude suit to recover outside the state of Wisconsin." *Ibid.* It is difficult to determine whether the emphasis is on the size of the penalty, or the contents of the record, or whether this language may be interpreted that penalties for delinquent taxes are not penal claims in the private international law sense of the word.

[66] People v. Coe Mfg. Co., 112 N. J. L. 536, 172 Atl. 198 (1934).

[67] *Cf.* Arkansas v. Bowen, 3 App. D. C. 537, 544 (1894).

[68] *Fourth Report of the N. Y. State Commission for the Revision of the Tax Laws*, 17 N. Y. STATE LEGIS. Doc. No. 56 (1934) 56.

THE TAX LIEN INVESTOR'S RELATION TO THE COLLECTION OF DELINQUENT TAXES

A. U. Rodney*

In normal years and prosperous years nobody paid very much attention to real estate taxes, taking them as a matter of course. Properties, especially in the East, were practically all mortgaged, principally by institutions, and part of their business was to call the attention of property-owners to their taxes. With the break-down of the mortgage structure through the difficulties of the title companies and other lending institutions, and coincidentally the difficult times, tax delinquencies mounted to such an extent that property-owners, municipalities, and bankers for the municipalities became sharply cognizant of the situation and started to examine carefully the procedures provided by the laws for the enforcement and collection of these liens.

The Banker's Interest in Collection of Taxes

Many bankers for municipalities have, in the past, been surprisingly lax in their requirements for proper safeguards to secure their municipal investments. Beginning in about 1932, realizing that their security was being impaired, bankers insisted upon reforms aimed directly at tax collections and tax collection methods. The very effective weapon of refusal to refinance communities unless these reforms were adopted was used with excellent results. In Westchester County, New York, for example, at about that time, bankers for several of the municipalities, and for the county itself, refused to advance additional funds or refinance current obligations unless two major proceedings were adopted. First, they insisted that sufficient taxes be levied to bring in enough actual cash to equal the annual budget. This had to be done by levying an amount equal to the average collections plus the probable deficiency in the collections. For example, the average collections were about 70 per cent of the annual levy, leaving a deficiency of 30 per cent. Therefore, the next annual levy had to have a cushion for this probable deficiency; thus, the levy would have to be 30 per cent in excess of the actual requirements. Another method adopted was to require a municipality to include in its new budget the entire amount of the delinquent taxes from the previous year.

The other major requirement was the insistence on a sound, workable tax lien

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law, making it mandatory for the municipality to hold a sale for delinquent taxes as soon after the fiscal year as was reasonable. A third requirement was, of course, the cutting of administration expenses to the lowest possible figure.

In line with the bankers' insistence on enforcement of the collection of delinquent taxes by a sound tax lien sale law, it is interesting to note that the City of New Rochelle, New York, had a tax lien law on its books for many years which contained the provisions, briefly, to the effect that if the delinquent taxes were not paid, the City Treasurer, *at his discretion,* could hold a sale of these delinquent properties. The law also contained a provision permitting the Law Department to foreclose against these properties. Practically nothing was ever done about it; the sales never held, and actions prosecuted by the Law Department were negligible.

Upon the bankers' refusal to renew certain obligations unless a new tax lien law was enacted, this city did enact a local tax lien law which was similar to the Westchester County tax lien law in effect at that time and which is one of the best laws for the sale of tax liens that the writer has examined. The results were startling. In its advertisement of sale under this new law, approximately $1,200,000 in delinquent taxes were advertised. Between the time the first advertisement appeared and the time of the actual sale (six weeks), the amount of delinquent taxes was reduced through payment by parties interested in the properties over 50 per cent. By the time the actual sale was concluded, not over 15 per cent of the original amount advertised remained delinquent in the hands of the municipality.

That bankers may have learned their lesson is evidenced by the careful examination of tax arrears in the last few years,[1] and it is hoped that the banking community will continue to be very critical of municipal financial administration.

THE EFFECT OF THE ADMINISTRATION OF TAX COLLECTION LAWS

It is interesting to examine the wide variety of laws throughout this country for the enforcement of collection of delinquent taxes, and particularly their practical application. Interest rates for redemption of liens after sale range from as low as from 5 per cent per annum to 100 per cent. The length of time permitted to property-owners or parties of interest to redeem runs from one year to five years, and the method of the sale of the property for tax liens themselves also varies widely in different states and in different sub-divisions of the states.[2]

The most satisfactory type of laws provides for the sale of a tax lien certificate with actual foreclosure at the end of the redemption period to enable the title to be perfected.[3] Under all the new amendments to tax collection laws, foreclosure pro-

[1] In another city in the same county an article appeared in the local newspaper under date of April 7th, 1934, as follows: "Bankers . . . offered to City Officials of Mount Vernon yesterday a loan if they would enforce a one-year tax lien ordinance and levy a supplementary budget as recommended by the Westchester County Financial Advisory Committee. . . ."

[2] For a survey of these laws, see Allen, *Collection of Delinquent Property by Recourse to the Taxed Property, supra,* p. 397.

[3] Laws which, as in Chicago and Washington, D. C., provide for the execution by an administrative officer of a deed to the lien holder at the end of the redemption period are unsatisfactory since the courts

visions are specifically adopted. Yet from a practical standpoint, many of the best of these tax lien laws fail in their purpose if they are improperly administered, and this is certainly the case in a great many places. For example, the City of New York has a tax lien law which embodies all the features recommended by tax experts to make up a good law, yet its administration greatly nullifies its effectiveness.

Briefly, Section 1027 of the City Charter provides that a tax lien for delinquent taxes shall be sold three years after the tax becomes delinquent. As a matter of actual fact, the books containing the list of delinquent tax liens have to be printed, and sales are not held until practically another year has elapsed. Even then, only a small portion of the liens advertised are offered for sale on the date for which the sale is scheduled. The sales from the list are held at the convenience of the tax arrears department at various times, extending as much as fifteen months from the original date of sale. This, of course, is undesirable and mitigates against the sale of the lien, since there is already four years' accumulation, and the lien is supposed to be held by the purchaser thereof for an additional three years. Thus there may be a possible accumulation of seven years' taxes, plus interest, penalties, costs, etc., which usually makes the lien less attractive to the investor. Experience has proven that the volume of sales and the payment of taxes before sale decrease in direct proportion to the length of time allowed before the lien is offered for sale.

The administration of the New York City law is not the only example of the nullification of the effect of a "good" law by improper administration. In the State of New Jersey, for example, the law provides that liens for delinquent taxes must be sold as soon after July 1st as possible of the year following the year when the tax originally became a lien. Theoretically, that would mean that taxes that remain unpaid for the year 1934 must be sold by the municipality as soon after July 1st, 1935, as possible. In actual practice, a large number of the municipalities do not comply with the law, and there are innumerable instances where no sales are held at all and the taxes, for example, as far back as 1933 have not at this writing as yet been offered for sale. Atlantic City, which comes under this law, has not had a sale since 1934, and Asbury Park has held sales at odd times for delinquent taxes long in arrears. Jersey City held no sale for delinquent taxes for eight years prior to December, 1935. The City of Newark, on the other hand, has recently held its sales promptly, as have a great many other New Jersey municipalities. Newark is an outstanding example of the improvement in a city's general finances through holding tax lien sales as required by the statute.

There are many taxing bodies throughout the country which hold their sales in strict compliance of the law, such as the Counties of Westchester, Erie, Nassau, and

frown upon titles acquired in this manner. Still worse is the procedure in California where the property passes automatically to the state, and, after five years, is offered by it at public sale. Laws which provide for the sale of the smallest portion of the delinquent property necessary to satisfy the tax lien never produce appreciable results for not only is the title likely to be defective but the sale attracts only persons interested in the specific parcel itself or those who desire to acquire a portion of it for its nuisance value.

Suffolk in New York State, but even where there is strict compliance, the political aspect cannot seem to be avoided. It is nothing unusual to have certain properties withdrawn from the sales on promises that the party of interest would pay, or upon the payment of a small amount as evidence of good faith. This throws the entire machinery for the enforcement of the law out of gear with regard to those particular properties since they do not automatically become subject to liens, and many legal problems arise as a consequence.

It has been the general attitude of municipal officials to ignore tax collections, or at least to avoid discussing them, and the mere thought of any vigorous efforts to collect taxes, particularly delinquent ones, was to be scrupulously avoided. Rockland County, New York, was successful in its sale of liens to investors and, more important, in the collection of liens offered for sale before the actual sale because of the threat of the sale. Nevertheless, because of its political unpopularity, the law was changed, reducing the amount of the interest from 10 per cent to 7 per cent, with the result that the year following this amendment, the County offered approximately $500,000 in delinquent taxes and received bids for only about $7,000. An effort was made to change the law in the City of Buffalo, New York, but fortunately for that city, this proposal was defeated because of the consideration given to some interesting figures presented by competent municipal finance experts.

One of the exhibits presented was a comparative schedule of the annual real estate tax levies and total uncollected delinquent taxes in the Cities of Buffalo and Rochester, New York, from 1905 to 1929. This exhibit showed that annual sales were held in the City of Rochester down to the year 1905. In 1905 the Rochester real estate levy was $2,129,646 and the uncollected delinquent taxes at face were $276,957. In the same year in the City of Buffalo the real estate levy was $4,923,421 and the uncollected delinquent taxes at face were $1,908,411. This report states that investment buying of tax liens was very active in the City of Rochester while the law for their sale was in effect, and up to that time there were no tax buyers in the City of Buffalo. With a reversal in the practices of the two cities came a marked change in their situation as to tax delinquency. In 1929 the real estate levy in the City of Buffalo was $27,875,714 and the uncollected delinquent taxes at face were $871,218. In the City of Rochester in the same year, the real estate levy was $16,380,688 and the uncollected delinquent taxes at face were $1,862,985. Based on these figures, in proportion the delinquency in Rochester would be about four times greater than in Buffalo.

During the strenuous days of 1931 to 1935 there was a great deal of favorable publicity in support of strict enforcement of tax lien laws, and many municipal officials began to realize that a vigorous stand on severe methods to enforce collection of taxes could be made a political benefit rather than the opposite. They simply saw the point that since delinquencies in any one year averaged from a fraction of 1 to 20 per cent of the tax levy, therefore, the 80 to 99 per cent of the prompt tax-

payers are forced to pay increased taxes because of the minority who are delinquent. In one township in Westchester County a supervisor, faced on the one hand with running for reëlection and on the other with straightening out a badly-muddled state of finances, called a general town meeting to explain why it was necessary to hold a sale of delinquent taxes on a large scale. When he pointed out to the taxpayers that the majority would have to pay increased taxes if the sales were not held, it was amusing to see how vigorously the assemblage insisted that the sales be held regularly without fear or favor thereafter.

TAX LIEN INVESTMENT COMPANIES' RELATION TO THE COLLECTION OF DELINQUENT TAXES

The purchase of tax liens for investment purposes is a highly-specialized and technical business. While there are many companies operating in the field in various sections of the country, and these companies are of a substantial nature, their combined resources are small in proportion to the amount of tax liens sold each year. Nevertheless, because of the wide variety of laws, and because most of the laws make it unsafe or unprofitable for investment in this field, more investment funds are available than there are investment opportunities.

There are in each community a few individual investors or real estate operators who purchase tax liens, tax deeds, or the property itself, whichever is sold, for the purpose of acquiring the property. The operations of this group are so small in relation to the operations for investment purposes that they are hardly worth considering. The investment companies, however, have a distinct place in the scheme of the collection of delinquent taxes. Where the law is favorable, the competition for the liens for investment purposes is very keen.

The tax lien investors' value to the municipality lies, not only in their ability and willingness to purchase the liens offered, thus supplying the municipality with the funds, but also in the fact that the property-owner has a strong incentive to pay his taxes before they go to sale when private buyers are available to purchase the liens. The description earlier in this article of what happened in the City of New Rochelle, New York, when the properties were advertised for sale under a tax lien law that meant business, is a good example. $1,200,000 in tax liens was to be offered as advertised, and this list was reduced by 50 to 60 per cent by the time the actual sale was held. All efforts previously on the part of municipal officials to force payments by threat, foreclosure, or in any other way, were without result.

An investment company submitted an application to purchase from a municipality in New Jersey, approximately $250,000 of tax liens held by that city, on which no collections had been made, although the city had held the liens for some time. Under the New Jersey law, a public advertisement of this proposal had to be published for five days before the liens could actually be assigned. Any redemptions in the meantime, of course, were deducted. During that five day period close to $200,-

000, or 80 per cent of the liens, had been removed from the list, and the remainder were assigned. The city received the $250,000, but the significant point is that the threat to transfer a primary interest in the property to a private corporation resulted in the immediate protection of the property by the parties of interest.

Many of our legislators who are evidently not familiar with the practical operation of the tax investment business cannot see why it is necessary to provide comparatively high yields in the form of interest and penalties on tax lien investments. The answer is very simple.

In the first place, in the proper conduct of the tax investment business, it is necessary to examine each and every parcel offered individually. When a list of delinquent taxes is advertised for sale, a complete check-up of this entire list must be made. This includes an examination of the tax rolls disclosing the valuations of the properties, an examination of the tax arrears, very often a title examination and physical inspection. This requires a staff of competent and experienced investigators. When these lists have been properly prepared at a very considerable expense, there is always a large reduction in the amount of liens actually to go to sale. The tax investor never knows which will be offered and which will be withdrawn, and therefore, must prepare the list from beginning to end. When the investment is made and the liens acquired, a tremendous amount of detail is involved in setting these up on the books as the items are usually small. Since all of these items are delinquent in the first place, a great deal of effort and much detail is required in the enforcement of collection. A properly conducted investment institution in this field must employ on its staff competent attorneys to handle the innumerable legal details involved.

While the investment in tax lien certificates is a sound one, its duration is indefinite, as all of the laws permit redemption at any time during the redemption period; thus the investment may be made one day and be returned the next. On practically all other comparable investments, such as municipal bonds, mortgages, etc., the investment is made in one large amount for a definite length of time and the investor has no further bother or overhead in connection with it.

Because of the legal complications, the tremendous detail and the indefinite maturity of a tax lien investment, the financing of tax liens by investment companies, presents some difficult problem. Undoubtedly, if the laws were simplified, and the procedure for the sales made more uniform, there would be considerable expansion in the activities of investment companies in the tax lien field.

General Suggestions for a Tax Lien Law

All competent authorities on municipal administration agree that a sound, workable law should contain three important factors. Quoting from "*The Enforcement of Real Estate Tax Liens*" by Mr. Carl H. Chatters, formerly City Auditor of Flint, Michigan, and now Executive Director of the Municipal Finance Officers Association:

"An efficient law for the enforcement of real estate tax liens must bring about payment of the taxes at an early date and at the same time be just to the taxpayer. Three things must be considered; first, the prompt collection of money due the municipality; second, the rights of the taxpayer; and third, the attraction of buyers for the tax certificates or other tax liens. Too much stress on any one of these points may throw the law out of balance and thus defeat its purpose."

Mr. Chatters prescribes the following three points for inclusion in any efficient tax collection law, the first of which he terms "the most important single factor in the development" of such a law:

1. The tax "sale should be held in the eleventh or twelfth month of the fiscal year for which the tax is levied."

2. "The sale should be made to the person offering to permit redemption at the lowest interest rate."

3. "The final enforcement of the tax lien should be by foreclosure in the same general manner as the methods used in foreclosing mortgages."

The National Municipal League in 1935 formed a committee with a distinguished membership, headed by Colonel Arnold Frye, prominent New York municipal attorney, to study the situation and offer suggestions for a model real property tax collection law. Quoting from the report:

"A study of the tax laws of those States where collections have been conspicuously good has led the Committee to the following conclusions as to what a model law should contain:

" . . . Tax liens should be sold at a general sale soon after the date of delinquency of the last installment. The law should make it mandatory that sales be held annually at an invariable date. Sales once begun should be continued from day to day without adjournment. Experience has shown that otherwise, favoritism may creep in and taxpayers will come to the conclusion that taxes need not be paid. The method of bidding should be on the interest rate which the purchaser will accept, thus keeping down the cost, but with a statutory maximum rate high enough to attract purchasers. The exact rate will depend on prevailing money rates but experience indicates 12 per cent per annum as a reasonable maximum. It has also been found that purchasers cannot be obtained if foreclosure is delayed and is expensive because such lien certificates are not desirable bank collateral. For this reason, the law may provide that interest be payable semi-annually and the period of redemption be shortened if interest and current taxes and assessments be not paid."

This committee drafted a model real property tax collection law, which, in the writer's opinion, has all the features that are necessary for a law that will produce the cash required by the municipalities and other taxing units for their operations. If this law were adopted generally, they would be benefited, the taxpayers would be treated fairly, and the investment companies operating in the field could greatly expand their services in relieving governmental bodies of the burden of tax delinquency.

AN APPROACH TO A SYSTEM OF "PERFECT" MUNICIPAL TAX COLLECTIONS

Raymond M. Greer*

During the periods of prosperity, when most people in the property-owning class have more money than their actual needs, they take very little, if any, interest in the cost of government and, incidentally, the taxes levied against them to cover such cost. As a result, the property owners are often tempted to use tax monies for speculative purposes because they believe they will receive a return greater than the tax penalty. In other words, they use their tax monies to finance speculations. They pay little attention to the increased cost of government which nearly always comes about during periods of prosperity. However, economic history shows one depression after another between periods of prosperity. The present depression, more severe than any other in our memory, has emphasized more forcibly than ever before many things relative to the levy and collection of taxes and the cost of government.

Partial blame for the inertia of the taxpayers must be laid at the door of those municipalities which have failed to keep the taxpayers tax-conscious at all times. During the periods of prosperity local governments share in obtaining easy money. They have very little trouble in borrowing in anticipation of the future collection of delinquent taxes. Therefore, lacking the need for rigid tax collection methods, they naturally follow the line of least resistance and borrow in anticipation of the collection of taxes rather than resort to the more or less disagreeable task of forcing tax collections by using all the powers within their means.

Now, then, let us see what happens during this period. To reiterate, the taxpayer takes little interest in his tax bill as he is not forced to pay his taxes. The municipality, having easy avenues of credit, does not force the tax collections but resorts to financing a substantial portion of its budget with borrowed money. The longer the period of prosperity, the more precarious becomes the position of both the taxpayer and the municipality. If, for instance, the period of prosperity extends over eight

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years and suddenly a depression comes about, the taxpayer finds himself owing, perhaps, five years' taxes which he could have paid in a majority of cases. The municipality finds itself with a top-heavy burden of floating indebtedness created, largely, through financing itself on borrowed money in anticipation of the collection of delinquent taxes which it has often made little effort to collect. The taxpayer's income from which he must pay taxes is suddenly severely curtailed and often entirely eliminated. The avenues of easy credit are suddenly closed to the municipality. It can no longer borrow but must either repay the monies previously borrowed during the period of prosperity or face the only other alternative, default. With the bugaboo of default appearing on the horizon, the first impulse is to inflate the budget to make up the slack in cash collections. Payrolls and debt service payments become uncertain.

Immediately, the defects of this system are brought to the front. Experts bloom overnight and are employed to study the situation and devise ways and means of remedying it. Organizations are formed, the Chamber of Commerce and other civic bodies immediately create committees, as does the legislature, to study the tax problem. Out of all this come various ideas for the creation of more rigid methods of tax collection, and more rigid functioning of municipal powers to collect such delinquent taxes. Taxing authorities and taxpayers become suddenly and painfully tax-conscious. Various efforts are immediately made to slam shut the "stable door" with the taxpayer desperately attempting to hold it open until he can sell the "horse." All sorts of improved methods are suggested, all of which are good if they can be made to work. There are usually a few vital factors overlooked, chief among which is the method of approaching a system of "perfect" tax collections. Sins of omission in the tax collecting business are difficult of atonement.

As we have said before, we find ourselves at the end of a period of prosperity and the beginning of a depression with the taxpayer owing a number of years' taxes and the municipality desperately in need of funds. Rigid tax collection methods and laws cannot now be practically applied, first, because the taxpayer has not enough money to pay up all of his tax liens; and, second, the municipality's confiscation of his property will, in a majority of cases, not produce immediate cash. One may talk with great force about taxes being a first lien and about municipal powers to collect taxes, but, if the money is not available, a way must be found of solving the problem without causing the conscientious taxpayer to lose his property and without forcing the municipality to fall into hopeless default.

We now approach the necessary steps to put our house in order and to permit, after the completion of these steps, the "perfect" tax collection method. These steps will naturally differ according to varying situations arising in the taxing districts. Some districts will have peculiar problems which arise because of the physical make-up of the municipality and the degree of enforcement of tax collection laws.

Before any intelligent steps can be taken the tax delinquencies should be classified into, chiefly, the following classes:

> One and two-family houses.
> Tenement houses (*i.e.* multi-family houses of the older and unimproved type).
> Modern apartment houses, hotels, clubs, etc.
> Stores and other small commercial properties.
> Factories and large industrial properties.
> Vacant land.

The reason for segregating these delinquencies is that different methods of forcing the payment of delinquent taxes should be applied, depending upon the class in which the property falls.

Obviously, more leniency should be shown to the small home owner, first, because, comparatively, his income is less; and, second, the loss of his home so demoralizes him that very often we find him and his family listed upon the relief rolls, and correspondingly increasing the tax burden. Experience has definitely shown that this class of property owner makes every possible effort to pay taxes and preserve his home, when pressed to do so.

More time must also be given the tenement and poor class multi-family houses, as the income to owners of this type of property is always proportionately less, particularly so during times of depression. The people who rent these houses have no reserve of funds and are the first to double-up. As a result, more vacancies in that class of property are created proportionately.

Commercial and industrial properties are a problem which must be treated separately, depending upon their location, the type of industry and commerce, and the extent to which they have felt the depression.

Vacant land should be given the least consideration, as most always it contributes little, if anything, economically to the municipality and is very often held in speculation. Most certainly, such speculation should not be financed by the municipality by permitting large tax delinquencies to continue, even if tax enforcement means confiscation of the property.

Please keep in mind that in giving the following suggestions for the approach to a "perfect" tax collection system we realize that it will undoubtedly be necessary for the legislatures to enact amendments to the tax collection laws permitting the application of these suggestions for a period long enough to correct the condition brought about by the inertia of the taxpayer and the tax collector.

A form of notice should be prepared and sent to the small home owner pointing out to him the fact that he is delinquent in his tax payments and also the necessity for the municipality to collect the delinquencies, together with the fact that in the near future the municipality will hold a tax sale. It is necessary to mention this or some other drastic threat in order to impress upon the taxpayer the necessity of doing something about his tax delinquencies, if possible. The notice should be in the form

of an invitation rather than a demand. The taxpayer should be invited to appear at the tax collector's office to discuss his problem with municipal officials. The interviewing should be done at night in order that the taxpayer will not lose a day's pay to attend this conference. This work of interviewing the taxpayer should not be left to clerks whose tact and judgment in handling the situation is apt not to be the best, but should be undertaken by officials. Such treatment is appreciated by the taxpayer and is more impressive. The taxpayer should be invited to sit down and work out a method of paying his taxes which will be within his means. The officials interviewing the taxpayers will hear the same hard-luck stories thousands of times but should appear interested, and not bored, by such repetition, as each delinquent taxpayer feels as though he has a special problem. If he is accorded sympathetic treatment we know from experience that he will do everything in his power to save his home.

An instalment payment arrangement should be made with each taxpayer, its stringency depending upon his income and the type of property. It is foolish to extract a promise from him to pay more than he is able, as, obviously, he will fall down on his agreement and become further discouraged. This agreement should include a promise from the taxpayer to pay his current taxes when due, and allow him a reasonable time in which to pay his delinquencies, on a monthly basis. In order to give him some inducement to do his utmost to pay, interest penalties should be suspended on the arrears so long as his agreement to pay is faithfully kept. Upon his failure to keep his agreement, interest penalties should not only again commence to accrue, but penalties so suspended should be added, and the whole tax become due and subject to a tax sale. While such agreement is in force the taxpayer will be assured of his property being excluded from future tax sales. As has been previously pointed out, the stringency of the agreement should vary according to the type of property and the tax-paying ability of the owner. Arrearages should be cleaned up according to the peculiar circumstances of the individual. Once the taxpayer has saved his property from a tax sale he will strain his resources to keep up his instalment payments as in so doing he saves a considerable amount in interest penalties as they have stopped accruing from the date of his agreement and for as long as it is kept.

Now, at this point, let us see what we have accomplished. We have some assurance of current taxes being paid when due. This is a great step forward to "perfect" tax collections and will permit the municipality, in so far as this class of property is concerned, to meet its operating budgetary expenditures when due. As far as the arrears are concerned they have been largely borrowed against, and the holders of the tax anticipation paper will be more apt to extend the payment of these obligations, rather than force the municipality into default, if they can be assured that proper steps have been taken to collect these tax delinquencies and apply them against their loans. Obviously, forced default imperils the payment of these obligations more than an extension of the obligation, provided that an intelligent method of protecting

the principal has been assured, within some reasonable length of time beyond its original due date. Debt readjustments have, as a consequence, become common occurrences.

An adequate follow-up system immediately becomes necessary. The taxpayer who has made an agreement must be taught that each instalment, preferably monthly, has to be met the same as the monthly gas or electric bill. It must be instilled in his mind that a default will result in the loss of his property at the next annual tax sale because of his breaking faith with the municipality. When a payment is missed, the owner should be immediately notified—or "reminded." The next notice should be a peremptory demand for payment. While such methods may seem to harass the taxpayer, they are essential in that they compel him to include tax payments in his budget for living expenses in the same manner as if they were rent payments. It has been discovered in many cases that the mortgagee is willing to reduce or suspend his mortgage interest in consideration of the leniency of the municipality in keeping the property out of a tax sale, as long as there is assurance that the tax instalment payments agreed upon will be kept up and will eventually clear up the indebtedness prior to his lien.

The modern apartment houses, hotels, clubs, etc., should be immediately forced into payment by their inclusion in a tax sale. This may seem a little hard on this class of property but it is the only thing that can be done. These properties are usually owned by people who are either speculating in potential values or they are investing for income. They usually carry a large first mortgage and very often a second mortgage. On account of the size of the mortgage the first mortgagee is usually a bank, insurance company, or other large investor who specializes in mortgage loans. Hence the mortgagee will usually have the ability to pay. Obviously, the municipality must collect large sums of money from tax delinquencies in order to put its own financial house in order. While it is expedient to give time to pay to the smaller taxpayer, the municipality must show to its creditors some evidence of financial stability. Taxes, of course, are a first lien coming before mortgages or any other liens upon property. They must be paid eventually; there is no escape. These delinquencies usually carry a higher rate of interest than the cost of mortgage money. Logically, it is to the best interest of the mortgagee to be forced, if necessary, to pay taxes and forego income upon his investment, at least temporarily. If these delinquencies are permitted to pile up, naturally the equity of the owner is seriously impaired, if not entirely wiped out, and the mortgagee, in order to protect his investment, must ultimately foreclose and take title to the property. Upon taking title to the property he is then liable for the payment of all the delinquent taxes which have been permitted to accrue, together with the payment of interest on such tax delinquencies.

If this line of reasoning is properly brought to the attention of not only the owner of the property but the mortgagee, they should be able to see its advantages. The

least that it will do will be to force them to a decision. They will have to decide to pay the taxes and retain the property, sell it, or transfer the property to stronger hands which will be able to pay the current and delinquent taxes, since they acquire the property fully aware of this condition. In fact, they would not be willing to take the property over unless they were able to meet the tax payments. Unless a municipality has been more lax in permitting delinquencies than any which have come to my attention, by threatening a tax sale it does not take the chance of being forced to buy in this type of property itself. The amount due will be paid by either the owner or mortgagee, or purchased for the taxes by an outside purchaser, in the event of a tax sale. This type of property, being of the more readily salable class and having a depressed market price far in excess of the delinquent taxes, makes an attractive purchase in a tax sale. In the final analysis one of two things happens. Either the taxes are paid in full or the property is forced into stronger hands and thereby the payment of the delinquent and current taxes by the new purchaser is assured the municipality.

Very often stores and small commercial properties are in a more or less seasonal income class and, by reason of the fact that they are commercially small, they have not, as a rule, the business ability to budget their expenses and to create a reserve out of their seasonal peaks to finance the fluctuation in their income properly. As a result, this class of property finds itself in a depression almost hopelessly sunk when large tax delinquencies have been permitted to accrue, unless some intelligent, sympathetic treatment of its tax problem is offered it. While it is true that this class of property is usually mortgaged, very often the mortgagee is not strong enough, if a wholesale confiscation is attempted through a tax sale.

Those properties on which the mortgages are held by the same type of mortgagee referred to in the apartment house and hotel class should be treated in the same manner as prescribed for that class, relentlessly forcing collections or forcing the properties into stronger hands. Such treatment may seem drastic, but as the taxes must be collected somehow, those who have the most valuable holdings and the best taxpaying ability will be the first to suffer.

Therefore, it again becomes largely an individual treatment regarding tax delinquencies. The very small store and factory, whose owner and mortgagee are financially weak, should be given time to pay, based on an instalment plan, as referred to before, worked out on a basis of either ability to pay or income from the property or business, or both. This method of treatment of this class of property is not based entirely upon the big-heartedness of the municipal officials, but good business for their financial department. As large collections of delinquencies are necessary for financial restoration, a strong hand must be used wherever possible. Also, where a tax collector, from his long experience, believes that the property will fall into the hands of the municipality through a tax sale, it is far better to show some leniency to the taxpayer and give him time to pay, based upon his income.

In permitting such partial payments, the municipality immediately gets some income towards delinquencies and assures the collection of current taxes which is, of course, the paramount feature of the agreement. In addition, the municipality helps to preserve a going business, and, naturally, we all hope for better times and consequently better natural tax collections. If economic conditions continue to get worse and never improve, then no tax collection system, no matter how strict, will be successful.

If the municipality disregarded these factors and held a tax sale based upon the figures as shown by its books and not upon intelligent treatment of the subject, it would find itself purchasing a large number of pieces of property which would have no immediate sale value. Most states permit a redemption period in their tax sale laws, averaging from two years upwards. During this period, the original owner, in most cases, is permitted to retain possession of the property or sell it, and cannot be forced to pay anything during that period. At the end of the redemption period the municipality may foreclose its lien. Under most state laws, foreclosure proceedings not only take a great deal of time, but are cumbersome and expensive, and very often a title so obtained is not considered the best by any means. Some title companies refuse to insure the titles on properties foreclosed through tax sale procedure. Obviously, wholesale purchases of property in a tax sale are not desirable. This, of course, only applies to municipalities which have not held tax sales with any degree of regularity and have permitted huge sums of tax delinquencies to accumulate.

Factories and large industrial properties are not generally in the tax delinquent class to any great degree. If they are large commercially, it is obvious that when their financial position gets to such a state that they cannot pay their taxes, they are bankrupt and not true going concerns. In most cases there are so many people vitally interested in these properties that if the present management cannot succeed they are taken over and re-financed before it is necessary for the municipal officials to take drastic action. With this class of property one of two things happens. Either there is enough value left in them to make the payment of taxes possible, or the properties are wholly abandoned. It is only in the minority of cases that such properties are abandoned. When, however, the latter occurs there is nothing the municipality can do, if it has permitted large delinquencies to accrue, except sell the property in a tax sale; buy it in; perfect title; sell it at an absolute sale and take the loss.

Vacant land should ordinarily be given little or no consideration whatsoever in any plan devised to approach a strict tax collection system. It produces no improvement assessments so, therefore, wiithout having some very excellent reason for permitting instalment payments, and then only where it is manifestly to the advantage of the municipality, this class of property should be included in a tax sale. If the marketable value is equal or greater than the tax liens, an outside purchaser will bid it in at the tax sale where the owner or mortgagee is unable to do so. If the

marketable value is less than the liens, the municipality will have to buy it in and sell it at an absolute sale for whatever price it will bring, even though it is necessary for the municipality to take a substantial loss. The reason for doing so is that the property is put back into the tax-paying class, and very often the building of improvements upon the land is encouraged because of the low sales price. The amount of ratables so gained may not only offset the loss in the lowered assessed value of the land, but, over a period of time, may more than offset the loss the municipality has taken through its absolute sale.

The so-called receivership method of tax collection[1] is a useful and alternative means to be applied at least partially to the following classes of property: tenement houses; stores and small commercial property; and, in some cases, modern apartments, hotels, clubs, etc., where it is good judgment to do so.

Several states have very successfully applied a special form of receivership to the managing of income-producing properties. The best examples of this are its application in the states of Illinois and New Jersey. The municipalities in these states which took advantage of the receivership method collected many millions of dollars during this depression that they otherwise would not have collected within the same period of time. This method is applied in cases where the owner and the mortgagee refuse to coöperate with the local officials in the tax delinquency problem, and where a tax sale could not immediately be held, especially as it applies to properties which the municipal officials believe are good tax sale properties, (*i.e.* properties which are delinquent in tax payments, yet very attractive in the present real estate market and assured of an immediate buyer in a tax sale).

Although the receivership method may seem to present a complicated and almost impossible task, it has been tried and its success definitely proven. The delinquent taxes on many thousands of pieces of property have been collected in the application of this special form of receivership. This method, of course, eventually exhausts itself, but it will be found to be of great value in that interim leading up to the point where a "perfect" tax collection system can be applied.

I want also to point out that the threat of the application of receivership has been proven to be very effective in the stimulation of the collection of tax delinquencies. The word "receivership" is greatly feared by the owner and highly respected by the mortgagee. Naturally, in working out an instalment method of payment of taxes it is very often necessary to have a club, or some legal persuasion.

No excuse is being made here for the contribution of the tax collector and other municipal officials to the tax delinquent condition in which a great many municipalities now find themselves. However, when this condition does exist either they, or someone else, will have to recognize the problems and treat them intelligently, taking into consideration not only the factors contributing to this condition, but methods of correction.

[1] For a more extended discussion of this method, see De Long and O'Brien, *Tax Receiverships*, *supra*, p. 382.

It should be clearly understood that this article is not intended to set forth a "perfect" tax collection system, but merely to provide some of the steps necessary to be taken by municipalities, lax in tax enforcement, before any strict tax collection system can be made workable. Students of taxation have advocated many important changes in our tax collection systems, and if these steps were taken most of our tax collection problems would be solved. However, more modern methods of accounting should be installed and municipalities should attempt to obtain scientific, analytical analyses and statistical information which will keep them in more constant touch with changing conditions and local tax problems. As modern commercial business firms have found that it is necessary, especially today, to remind debtors constantly of their obligations, so the municipalities should benefit by their experience and install the modern dunning and follow-up collections systems suggested above.

Many hundreds of other suggestions have been made. A great many of them are constructive and necessary but, in my opinion, none of these suggestions will work without first having put our municipal financial affairs in order, particularly as they concern tax delinquencies and outstanding obligations created by the borrowing against these delinquencies. Such steps are a prerequisite to the attainment of perfection in the collection of taxes.

IMPEDIMENTS TO TAX COLLECTION OUTSIDE THE TAX LAW

Philip H. Cornick*

One wholesome by-product of the depression has been the growing recognition among public officials and civic agencies of the importance of well-drafted tax laws and of businesslike procedures for the assessment, levy and collection of taxes on real estate. In many sections of the country, the movement for the improvement of our statutes and our administrative competence has borne fruits which amply justify the enthusiasm of its advocates. The fact remains, however, that the unhealthy situation which exists with respect to tax collections in some jurisdictions has not proven readily susceptible to cure by the application of any of the remedies which have been, or which legally can be, made available in the pharmacopoeia of tax administration.

That some at least of the causes of this situation lie wholly beyond the reach either of the tax law itself or of the most competent administration thereunder is a fact which seems not to have been given sufficient weight even in the more searching of the studies of tax delinquency which have recently been made. When its existence has been recognized, the proposals for reform have been based too largely on assumptions which are valid with respect to certain classes of real estate only. Those assumptions may be summarized somewhat as follows: that all arrears of taxes on real estate can be traced to one or the other of two basic causes—either the sheer financial inability of the owner to pay his taxes, or his unwillingness to pay even though he be able to do so. The proposals for reform centering around these assumptions may be grouped under two headings: those designed to make it as easy as possible for distressed taxpayers to make complete or partial payments, and those designed to stimulate unwilling taxpayers, either by holding out inducements in the form of discounts or by resort to coercion in the form of penalties, tax sales and foreclosures. To the extent that a given tax roll is made up of properties whose owners can be reached by these means, these reforms have proven their effectiveness. This paper will be directed to the consideration of two types of situations which have resisted the tax reformer's therapy.

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I

ACCIDENTS OF OWNERSHIP

Unfortunately, several varieties of what might be called accidents of ownership militate against the usefulness of such remedies. When there is no clearcut and dominant interest in a given property which is sufficiently large to make it worth protecting against the imposition and foreclosure of tax liens, or when the ownership of that dominant interest is in itself estopped by legal, administrative, or economic obstacles from protecting itself, the most aggressive and competent tax collector, operating under broad powers, may still be impeded.

A few cases of this kind will be found even in the best of tax rolls. They are not due to bad administration either in the assessor's or in the collector's office; they cannot be eliminated by good administration on the part of any tax official. As long as they exist only in small numbers their untoward effects can be offset during the process of budgeting by the creation of reserves for delayed or uncollectible taxes. That has been done recently on a fairly large scale in jurisdictions which were compelled by the growing intensity of the depression to make the transition from an accrual to a cash basis of budgeting. There is a limit, however, to the creation of such reserves, because they can be made effective only by increased levies on the properties which make up the remainder of the roll. The increased levies in turn may force properties which had formerly been good taxpayers into the class in which the dominant interest is no longer worth protecting against the foreclosure of the lien.

Now, what are the particular accidents of ownership which stand in the way of tax collections, and how do they arise? As has already been indicated, they exist in wide variety, and are caused by divergent factors. Only a few partial and inadequate studies have as yet been made in the field—studies which provide the basis only for rough outlines of their nature and for approximate guesses as to their extent. Three clearly defined types will be discussed below.

Properties in Receivership

First in complexity, perhaps, are the cases involving the taxable real estate of insolvent corporations which are in process of reorganization or liquidation. Because private creditors are subject to fewer trammels than municipal corporations in taking prompt steps to protect their interests, a corporation fighting against insolvency will as a rule go into arrears in taxes in order to conserve its slender resources in cash for meeting other claims. As a result, substantial tax arrears have generally accumulated against the real estate before action by a private creditor leads to the appointment of a receiver. The recurrent annual levies during the protracted receiverships which are only too common merely go to swell the already large volume of arrears. Even when the liens are offered for sale, private lien buyers are averse to bidding, and the city is forced to hold the lien. When, in a recent case, the city of Yonkers was con-

sidering the advisability of foreclosing its tax lien on such a property, a federal judge sternly warned that the action would be deemed contempt of court. Beyond the creation of reserves for uncollectibles in each successive budget, it is obvious that a city is powerless to protect itself in circumstances of this kind. The situation can be ameliorated, if at all, only by reforms in the bunglesome procedures in insolvency cases, and by the recognition by the federal courts in practice of the accepted doctrine that liens for local taxes have priority over all private liens and encumbrances.

Properties in Decedents' Estates

Somewhat analogous to cases of this kind are those which arise in the interim between the death of a testator and the final distribution of the property in accordance with the provisions of the will. Taxes can and frequently do fall into arrears during such a period. In some instances, the estate finds itself in the position of being "land poor." In the case of large estates, other factors often intervene. Among these is the consideration that many able lawyers are poor business men, who do not always realize that dispatch in the closing of an estate may be of decided monetary advantage to the heirs. The situation is further bedevilled because the very delays which may be poor business from the standpoint of the client may be decidedly to the financial advantage of the attorney. The tax administrator is not quite so helpless in the face of situations of this kind as he is in connection with properties in the hands of a receiver, but even so, he can do little which will insure a steady flow into the treasury of the recurrent annual tax levies during the sometimes unduly extended period of transition in the title of properties in this group.

Except in municipalities whose economic stability depends largely on the operations of one industry, there is little danger that accidents of ownership of the two types just discussed will precipitate a situation which in itself will seriously cripple local finance. They are of importance in this discussion only because it would be difficult, in good times as well as in bad, to find a tax roll in any of our larger municipalities which does not contain a limited number of large taxable properties in these categories; because the number of properties in these classes tends to increase at the very time when depressions force other properties not subject to these accidents of ownership into the non-taxpaying classes; and because the effects of these unpredictable large cases, coupled with the more easily predictable arrears on a considerable number of smaller properties, may combine to undermine the ability of a municipality to pay its own bills when due.

Properties Financed by Mortgage Certificates

The third class of properties which may become non-taxpayers because of accidents of ownership is relatively much more important in many urban areas than the preceding groups, whether from the standpoint of numbers or from the standpoint of the volume of taxes involved. It is a by-product of one of the haphazard methods of private finance which was widely used a decade ago. The simple method of

financing building operations that had formerly prevailed, in which a substantial equity gave security to a first and possibly a second mortgage held by responsible mortgagees, did not meet the needs of the financial wizards who rose to eminence during the boom. The owner of the property, whether individual or corporate, rarely had any substantial interest in one after another of the towering edifices which during the last decade pierced the sky in all of our rapidly growing cities. In all too many cases, the money for financing the entire enterprise, including fat profits for the promoters, had been obtained by the issuance of a mortgage, which in turn was subdivided into numerous certificates of participation, large and small. Such a mortgage was generally serviced by a corporation created for the purpose. It was usually guaranteed both as to principal and interest, in some cases by a corporation independent of the servicing corporation. When the real estate crash came, the only one of the many interests in such a property which was organized for immediate action was the ownership of the fee, but that interest frequently had little in the way of actual investment to protect. The dominant mortgage interest, on the other hand, which had made the only substantial cash investment in the venture, had not only been lulled into a false sense of security by the existence of the supposedly iron-clad guarantees, but it had also been so widely and loosely disseminated that when those guarantees proved worthless it found itself wholly without the means for protecting itself.

Thoroughgoing analyses of the influence on tax delinquency of this type of financing remain to be made. A hurried study made by the writer in Yonkers at the close of 1933, when current collections had dropped to 69 per cent of the levy, showed that of 89 apartment houses, with a capacity of 16 families or over which were located in the southwestern section of the city, 50 were in arrears on current taxes, and 23 were also in arrears for taxes of the preceding year. The larger and more costly buildings in this class were in arrears practically without exception. These large multifamily dwellings as a class were evidently more deeply in arrears than the taxable real estate in the city as a whole. A subsequent study also made by the writer in the adjoining city of Mt. Vernon revealed the fact that of the 11,396 taxable properties on the roll, 34 large improved properties ranging in assessed valuation between $100,000 and $1,500,000 were responsible in September 1934 for 10.8 per cent of all the unpaid taxes and assessments of 1933 and prior years.

Time did not permit an analysis of the status of the properties in either city with respect to mortgages. The certificated mortgage was, however, widely resorted to in the construction of apartment houses, office buildings and theatres throughout the entire New York metropolitan area of which these two cities are parts; and the reports on one after another of such properties, made from time to time by the state superintendents of insurance and of banking, and by the recently created mortgage commission—official agencies to whom fell the task of protecting the scattered holders of mortgage certificates—indicate the extent to which the taxes thereon

had been allowed to fall into arrears before the state intervened. While it has not been clearly proven, all available facts point to the conclusion that a large part of the tax delinquency on income-producing properties throughout the more densely built-up portions of New York City and of its suburbs at the end of 1933, was traceable to properties financed with mortgage certificates; and that the recovery in current and delinquent tax collections which has taken place since that time is attributable not alone to economic recovery and to improved tax administration, but also in large part to the insistence of the state agencies referred to that the certificate holders be protected by the payment of taxes.

We have dealt up to now with classes of properties which as a group are worth protecting against the imposition and foreclosure of tax liens. As soon as the more or less temporary obstacles which hamper the freedom of action of the dominant interests in the properties are removed, the properties in question resume their normal status as income producers for their owners and as taxpayers to government. Meanwhile, however, they may have forced the municipalities in which they lie to suspend payments on their own obligations.

II

PROPERTIES IN UNNEEDED SUBDIVISIONS

We come now to the second type of situation which resists tax reform. It is widely distributed throughout the extensive areas of prematurely subdivided land lying in the fringes of practically all our urban districts. Properties in this class can and frequently do suffer from badly involved titles which deprive the dominant interests of the freedom of action necessary for self-protection. But the basic difficulty lies in the fact that the properties themselves may be so incapable of producing present income, and the hope of future income may be so remote, that even owners who hold them free of all encumbrances save those involved in liens for taxes and special assessments may come to the conclusion that the property is worth less than the taxes. The problems created by this situation are serious, especially in suburban areas and resort cities. An unduly high proportion of the American municipalities which have not yet succeeded in adjusting defaults on bonded debt are in one or the other of these two classes.

It may be contended that the correction of such a situation is easily within the scope of good tax administration; that the assessor can and should reduce the valuations of such properties to a point where the owner could afford to pay taxes. Where fixed levies for local improvements have not already been imposed, such a plan may prove effective. On the other hand, it is possible to cite instances of subdivisions ranging in size from a few hundred to several thousands of lots, in which no local improvements have ever been installed, and in which the lots are assessed at only five, ten, or twenty dollars each. The tax levies per lot amount to a

few cents per year. Nevertheless, every lot in these subdivisions is now in arrears and has remained in that condition for decades.

Why, it may be asked, is it not within the scope of good tax administration to clean up such situations by tax sale? The answer to this question will vary from one part of the country to another. In some states, a tax title constitutes little more than a cloud on the title of the owner of record; in other states, a title based on a lien for taxes vests only after resort to the same procedure which the real estate law provides for the foreclosure of a mortgage. In either case, substantial costs over and above the arrears of taxes are involved before a public or private holder of a tax title or a tax lien can make his claim effective.

The problem of recovering by sale the amounts involved in levies on prematurely subdivided vacant lots even when they have a substantial value, is by no means simple when those levies include special assessments. Improvements installed during the latter part of the boom when design and specifications were on a lavish scale and costs of construction high, resulted in special assessments per lot which are unduly onerous from the standpoint of present day prices. Private individuals are not interested in acquiring the properties for the sums involved in the levies already overdue. When future instalments of special assessment levies also remain to be paid, the private buyers avoid the property as they would a plague. When, as in some states, the lien for general taxes is separable from that for local improvements, and when the sale of a property for general taxes divests all other liens including those for special assessments, the problem of the collector of general taxes is somewhat simpler. The entire security, on the other hand, which underlies the so-called municipal bonds which had been issued for the street improvements, is wiped out, and the loss falls on the hoodwinked investors.

Another factor intervenes to complicate the situation. Two cases have come to the writer's attention in which local governments had acquired title to groups of vacant lots covered by restrictions on the value of the houses which could be erected thereon. Because $18,000 will build a more pretentious house today than it would have done in 1927, and because the demand for $18,000 houses in those sections has almost ceased to exist, those lots are today practically unsalable. No amount of improvement in tax law or in tax administration *per se* will serve to make such properties, or the tax liens on them, convertible into cash.

How important have arrears on vacant lots been in the total arrears which confronted municipalities at the trough of the depression? Here again, not enough research has been done to provide a complete answer. In Manhattan Island in the City of New York, only three out of every 100 taxable properties are vacant lots. Only $1.50 out of every $100 of taxable value is on vacant lots. Under such circumstances, even if all the vacant lots had ceased to pay taxes—which is not the case—the result would not be serious. On Staten Island, which is also in the City of New York, the situation is somewhat more serious. There 52 out of every 100 pieces of

property are vacant lots and more than $17 out of every $100 of taxable value is based on nothing more substantial than non-income-producing vacant lands not used for any purpose. It is probably significant that Staten Island, which has the greatest oversupply of lots in premature subdivisions in the entire city, should consistently throughout the depression have paid a smaller percentage of the general taxes levied on it than any other of the five boroughs. Figures as to how it fared with respect to levies for local improvements are not readily accessible.

Around Buffalo

Further testimony concerning the paralyzing effects of premature subdivision on tax collections is contained in a series of mimeographed tables issued by County Treasurer Charles Ulrich of Erie County, New York. In that county, which contains the city of Buffalo, the suburban cities (two in number) and the outlying towns (25 in number) contained 178,963 taxable parcels, of which 89,086 failed to pay their taxes for 1935. The liens were offered for sale. Private lien buyers took 2,141. The county was forced to buy in 86,945. No count has been made of the number of improved properties which went to lien sale, but inquiry elicited the opinion that practically all of the improved properties in arrears were bought in by the private lien buyers, and that the liens acquired by the county consisted with few exceptions of those on vacant lots. More striking still, four of the suburban towns immediately adjacent to Buffalo had contributed 49,832 of the liens acquired by the county. One town alone, containing 36,630 taxable properties, was responsible for 21,172 of the liens which no private buyer would touch; another with 25,498 taxable properties was responsible for 14,699 of the county's unsalable liens.

No study has been made of the effect of local improvement levies on the arrears in those towns. The report of the New York State Tax Commission for 1934 provides the basis for the statement that 86.7 per cent of all the special district levies in the 25 towns of Erie County fell on properties within the four towns immediately adjacent to the city of Buffalo—the same towns which contained the largest number of properties subject to unsalable liens. Furthermore, the report of the county treasurer already cited shows that those same four towns have contributed 79.21 per cent of the face value of all the liens held by the county for taxes of 1935 and prior years, including the liens for county taxes on properties in the city of Buffalo and in the two smaller cities in the county. If the county-held liens on properties in the three cities are eliminated, the four towns which have the heaviest levies for local improvements, and the greatest surplus of prematurely developed vacant lots, are found to be responsible for 87 per cent of all the accumulated arrears in the 25 towns.

In Westchester County

Figures are also available for the county of Westchester, New York, in a report prepared for the Westchester County Commission on Government. That county lies adjacent to the City of New York and contains four cities and 18 towns. In

1934, the tax rolls listed 222,802 separately described parcels of taxable property. Of that number only 90,678 contained structures of any kind. The remaining 132,124 properties consisted of vacant lots in subdivisions or vacant acreage awaiting subdivision. In the 18 towns and in the three largest of the four cities, an analysis of the lien registers revealed the fact that 60,294 properties were in arrears for general taxes and local improvement levies to an aggregate sum in excess of $13,800,000. Of that number, 12,173 were improved properties, including factories in the hands of receivers and large structures erected from the proceeds of the sales of mortgage certificates. In spite of the substantial sums due on properties in this group, the vacant lands were responsible for 52.5 per cent of the accumulated arrears of taxes and local improvement levies for 1933 and prior years. When the 18 towns alone were subjected to scrutiny, it developed that there was a close correlation between the burden of local indebtedness and tax levies on the one hand and the extent of premature subdivision on the other.

AVENUES TO REFORM

Analysis would no doubt show that among the large number of cities which had previously been in default but which have succeeded in resuming payments, many were the victims of the obstacles to tax collection which were discussed earlier in this paper—obstacles which for the time being were insuperable from the standpoint of the tax collector, and which were removed by procedures in fields of law not directly related to the tax law itself.

In the fields of law having to do with the transition of title to real estate under procedures supervised by the courts and administered by attorneys, much could probably be accomplished by a more businesslike and more ethical approach to the matters involved. The sources of the third and more serious group of obstacles,—those created by our recent resort on a large scale to certificated mortgages,—are probably being removed in part by amendments to existing mortgage, banking, and insurance laws.

Even after these changes shall have been made, certain things will remain to be done within that "no man's land" surrounding our real estate law in which the conflicts between public and private rights in lands arise. Under the leadership of specialists in the law of city planning, we have succeeded in driving certain vulnerable salients into that area through our extension of public control over private land uses under the police power. In the face of the disruptive forces generated by speculative inflations in land prices which occur from time to time, those controls in their present forms have proven themselves relatively ineffective in preventing either the overintensive development of lands near our urban centers or the overextensive developments in the urban fringes. These inflations, and the inevitable deflations which follow in their train, have been so devastating in their effects on the orderly processes of governments and of individuals alike, that their control becomes a matter of primary importance—a challenge to the best thought of lawyers, economists, and political scientists alike.

UTILIZATION OF REVERTED TAX DELINQUENT LAND IN RURAL AREAS

Paul W. Wager*

A short time ago a county official said to the writer, "The only way this county can keep going is to keep all the land in private ownership, and if the owners are not able to pay the taxes every year they may at least pay them some years, and if they cannot pay the full tax we should accept a partial payment." In this statement the official casually but accurately epitomized the philosophy which still prevails with respect to land ownership and land taxes. Many people apparently do not realize that as this country approaches a stationary population land must be valued on its productive capacity and not by capitalizing an expected increment. Moreover, the margin of cultivation for agriculture is being steadily contracted, and non-agricultural land must be put to other productive use if it is to make its full contribution to the support of population. Private capital, having exploited our natural resources, may not be willing or able to undertake the renewal of these resources and to carry the investment during the long waiting period. The retention of non-income-producing land in private ownership almost invariably leads either to the collapse of the tax collecting procedure or to the further destruction of the resource. Certainly it operates against the conversion of the land to new uses and the restoration of economic stability.

To urge the retention of all land in private ownership in order to preserve sufficient tax base to support local government overlooks two important facts. First, in a county with diminishing resources the tax base is being reduced regardless of what is listed on the tax roll, and taxes cannot continue indefinitely to be paid out of capital. Second, there is no need to perpetuate every political unit established to meet conditions of an earlier period. If our natural resources are to be renewed and conserved and each type of land put to its best use, tax policies must be shaped to that end. This does not necessitate the granting of subsidies; it requires only the proper recognition of the use-capabilities of different grades of land and their valuation for taxation accordingly. It also demands an easy and direct means of

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transfer from private to public ownership when the private owner is unwilling or unable to assume the responsibilities of ownership.

MUCH LAND UNSUITED TO PRIVATE OWNERSHIP

There is a vast acreage of land in the United States that is better suited to forestry than to any other use. Some of this occupies such extensive areas that it should be purchased and administered as national forests. Already 170 million acres are in federal ownership, but there is much blocking-in which needs to be done, both in the interest of efficient administration and sound land use. There are many slightly less extensive areas of forest land which lend themselves to state or municipal ownership. Public ownership is preferable to private ownership when a watershed needs to be protected or when the time and cost involved in getting the forest on a sustained yield basis are too great to attract private capital.

Similarily there are areas now largely in farms which are more suitable for grazing, or for wild life preserves, or for recreational development. To block up these areas and then develop and administer them in the public interest is a task for government rather than private enterprise. It is not suggested that all major adjustments in land use must wait upon public ownership. It is evident, however, that in many cases it is the only means of checking the wastage of our soil and forest resources.

TAX DELINQUENCY NOT ALWAYS INVOLUNTARY

Tax delinquency may be due to various causes, but chronic delinquency frequently accompanies a transition in land use and unstable ownership. Not all tax delinquency is involuntary. If one owns property the original cost of which has been recovered or property which is not yielding an annual income, his promptness in paying taxes is likely to be determined more by the diligence with which collections are prosecuted than by his financial circumstances. A reasonably prompt foreclosure would force him to decide whether to raise the taxes or surrender the property. Even where delinquency is involuntary, less hardship would result from prompt and vigorous enforcement of the tax lien than might be supposed. Taxes on productive property could generally be paid out of income if the owner knew in advance that there was no alternative and made preparations. The owner of unproductive or deferred-yield property must of course pay the taxes out of other income or out of capital. Presumably he expected to do this when he acquired the property. If his own resources fail him in a particular year, he should have no difficulty in borrowing the amount of the taxes with the property as security. If the property were already encumbered, the mortgage-holder would, of course, have to advance the taxes to protect his equity. The government would either get the taxes or the property; it would cease being an extender of credit. The effect viewed from the taxpayer's angle would be that some properties owned by people operating on a shoe-string would be

transferred to stronger shoulders and some deferred-yield properties would revert to the state or county.

REVERSION CHECKED BY DEPRESSION LEGISLATION[1]

The large volume of delinquency which appeared as a product of the depression prompted the legislatures of many states to authorize compromise settlements. Others waived penalties or declared moratoria on tax foreclosures. While most of these concessions were temporary, their demoralizing effect will long be felt. Moreover, they interrupted, even prevented, the transfer to public ownership of lands voluntarily abandoned by private owners. It is estimated that at least four million acres of cut-over land in Minnesota was subject to state title in 1933 when the legislature extended the redemption period from five to seven years.[2] Similar stays were granted in Oregon, Washington, North Carolina and many other states.

In North Carolina there is no state property tax and land bid in by the county at tax sale may be foreclosed after two years. Although the county can secure a good title there are only scattered instances where it has done so. The legislature of 1935 authorized a certain county to appoint an adjustment committee with authority to compromise the taxes of 1932 and prior years.[3]

A certain land and timber company owned something over 14,000 acres of cut-over land on which it had paid no taxes for 1926 or any year subsequent. The seven years' taxes, exclusive of interest and penalties, amounted to $3,184. The committee accepted a cash settlement of $1,592, or just half of the original tax. Had the compromise not been authorized the county could have taken title to the land along with perhaps 100,000 acres of land of similar quality. Had the property been likely to become taxpaying regularly hereafter, there might have been some justification for not having taken title. But most of it will continue to be delinquent in expectation of concessions again, and other taxpayers, hitherto punctual, will join the procession in self-defense.

STATE TITLE OFTEN WORTHLESS

One reason why political units have been reluctant to enforce the tax lien is that they have been unable to get a good title to the property. In many states reversion is only nominal; the former owner possesses an indefinite right of redemption and frequently he can redeem at less cost than the accrued taxes.

In Mississippi, lands that have matured to the state may be redeemed by the owner at any time after maturity date by the payment of the taxes, plus damages (penalties) and six per cent interest for the year the property was sold for taxes. The state may acquire valid title to land maturing for non-payment of taxes only when the general public, including the owner at the time of tax sale, is favorable to the land being sold or dedicated by the Governor to a public use. Dedication might

[1] For a discussion of this legislation see Smith, *Recent Legislative Indulgences to Delinquent Taxpayers*, *supra*, p. 371.

[2] Minn. Laws 1933, c. 98, p. 104.

[3] N. C. Laws 1935, Pub. Local No. 413.

be accomplished by virtue of an act providing for a commission to survey lands owned by the state to determine their adaptability for use as state parks, game and fish preserves and state forests.[4] Findings of the survey must be submitted to the board of supervisors of the county in which the lands are located, and no transfer and dedication to state use can be effected without the approval of the board of supervisors after a hearing to which the former owner is invited. To date, no land has actually been dedicated in this way.

In Louisiana, land offered at tax sale and failing to attract a private bidder is adjudicated to the state and a list of such properties, together with the amount of taxes and costs, is filed by the sheriff with the State Land Office.[5] However, the state does not obtain a title to the land, merely holding a claim against it to the amount for which it was adjudicated. The owner may redeem the property at any time by paying the state its claim, that is, a single year's taxes plus the advertising and selling costs. Anyone may request that a specified piece of unredeemed property be advertised and offered for sale by simply making a $25 deposit. The amount bid at such sale must equal the amount for which the property was assessed on the tax roll. If such an amount is not bid the property may be appraised and again advertised for sale. "It is possible," says a Louisiana commentator, "that land adjudicated fifty years ago for non-payment of taxes may have been used for personal gain throughout the entire period without the State having the benefit of any taxes."

A recent study revealed that on November 15, 1934 there were 3,441,860 acres which had been adjudicated to the state and not redeemed. However, the state has set up no agency whose function it is to locate the adjudicated land, to determine the use being made of it, and to classify it for present or future use; neither is the delinquent taxpayer evicted from the land.

In Florida, at the present time neither the state nor the counties can take title to tax delinquent lands. In 1929 a statute was passed which provided that the county tax collectors should sell land on which the taxes were unpaid at public auction, and in case there were no private bidders of a sufficient sum to pay the full amount of the decree, including interest and subsequent costs, the title to the land should be transferred to the Trustees of the Internal Improvement Fund.[6] This body, acting for the State of Florida, could hold or dispose of such land as it saw fit. However, this statute was repealed at the 1935 session of the Florida Legislature,[7] and since then has not been operative.

The trustees now have holdings, acquired under the 1929 act, located in four counties and consisting of 31,260 acres and 177 lots. These lands will await such disposition as the Trustees may see fit, and as is in accordance with authority vested in them. Their policy to date has been to assist the original owners to reacquire their land upon payment of delinquent taxes. Where application has been made by

[4] MISS. ANN. CODE (Hemingway, 1930) §4750.
[5] LA. CODE (Dart, 1932) §8441.
[6] FLA. COMP. LAWS (Supp. 1934) §1003 (12).
[7] Fla. Acts 1935, c. 17442.

such an owner at the time of sale, the Trustees have issued a deed to him for approximately the amount of the decree plus a small fee to the Trustees for handling. In several instances lands have been sold to others than the original owners where consent of the latter has been procured. The Trustees have coöperated with the counties and interested parties to restore the lands to the tax books and to the possession of the original owners.

According to a report prepared for the Governor's Office, February 1, 1933, there was at that time in Florida 16,707,273 acres covered by state certificates. This represented approximately one-half of the 34,075,907 acres in the state. It was estimated by the Special Committee on Taxation and Public Debt in Florida, that at the beginning of 1935 the amount of tax-delinquent land had increased to over 18,000,000 acres. As can be seen from the figures given above, the amount of land now held by the Internal Improvement Fund, 31,260 acres and 177 lots, is only a very small part of the total tax-delinquent land in Florida.

Technical flaws render valueless the title to most of the 2,000,000 acres of land in Arkansas which tax delinquent owners have failed to redeem after it has been bid in by the state. In Tennessee the law authorizing the state to acquire title to tax delinquent property has become a dead letter as a consequence of official laxity and, lately, because the state's abandonment of the real property tax has left the counties and municipalities unprepared. Although in Kentucky the state can purchase tax delinquent property, the unvarying policy of that state has been to commit such land to private ownership rather than to vest title in itself.

THE ADMINISTRATION OF TAX-REVERTED LAND

Even those states which can get a good title to tax delinquent land have been hesitant about taking title because of the lack of facilities for administering it. Notable among the states which guarantee clear title to tax-reverted lands and which have also made provision for administering such lands are New York and Michigan. In New York the right of redemption expires one year after the date of sale.[8] In the forest-preserve counties the tax-title lands pass directly to the state and absolute title is assured.[9] In other parts of the state delinquent lands go to the counties.[10]

The Hewitt Reforestation Act of 1929[11] authorized the purchase and reforestation of idle and abandoned land outside the forest-preserve counties by the state wherever blocks of 500 acres or more can be acquired, and by the state in coöperation with the counties in which they lie in the case of smaller abandoned tracts. An initial appropriation of $100,000 was provided by the Act to inaugurate the work, and in 1931 the voters of the state approved a bond issue of $19,000,000 to carry it forward. New York thus offers the owner of submarginal land an opportunity to sell it at a nominal price rather than have to sacrifice his entire equity.

In Michigan, the right of redemption expires six months after a deed made to

[8] N. Y. CONSOL. LAWS (Cahill, 1930) c. 61, §§127, 152, 153.
[9] *Id.* §151. [10] *Ibid.* [11] *Id.* c. 10, §60a.

the state has been recorded in the county in which the land is situated and thereafter the title is absolute.[12] Land so acquired is classified according to its use capabilities and that not suitable for agriculture and lying adjacent to other state lands is dedicated to state use. The state has already acquired title to about two million acres, most of which is being administered by the state department of conservation as state forests, state game refuges, or state parks.

In Wisconsin, lands that have been delinquent for three years may be deeded to the county.[13] Counties do not have to foreclose immediately after the expiration of three years, however, the law permitting a deed to be taken any time within 15 years from the date of the tax-sale certificate. Some counties have adopted the policy of acquiring a deed as soon as the redemption period of three years has elapsed. Others attempt to sell the certificates even at less than face value, but the tendency appears to be in the direction of taking title to all lands which may be deeded. Counties are encouraged to list suitable tax-reverted lands under the forest-crop law, and 853,000 acres of county lands had been so listed up to September 1, 1933. The state pays to the county ten cents an acre annually for management and exacts 75 per cent of the revenue derived from the sale of timber. Under Wisconsin's county zoning law[14] a county may exchange tax-reverted lands in unrestricted areas for other lands in areas closed to further settlement.

Legislation has been enacted in Minnesota through which the state may acquire tax-delinquent lands for inclusion in conservation areas.[15] A fund of $50,000 has been appropriated for the acquisition of lands delinquent for three years or more. The owner selling the land must reimburse the local tax districts for back taxes, in whole or in part, and the balance of the proceeds of the sale, if any, goes to the seller.

In Virginia, tax delinquent land formerly could revert to the state but with the abolition of the state property tax there developed some uncertainty whether the county could foreclose on the lien. At any rate, the counties have not done so, and it is estimated that there are fully a million acres subject to reversion. In a recent session, the legislature, therefore, clarified the law, giving the county the unquestioned right to take title.[16] As an inducement for the county to do so, another act was passed whereby forest land owned or acquired by a county may be deeded to the state, and the state will return to the county 25 per cent of the gross receipts therefrom.[17] It is contemplated that the state will block up state forests around these tax-delinquent lands by means of federal loans obtained under the provisions of the Fulmer Act[18] which authorizes Congress to set up a revolving fund from which loans may be made to the states for the acquisition of forest land. The loan is to be repaid without interest from the proceeds of the forest, fifty per cent of its income to be earmarked for this purpose.

[12] MICH. COMP. LAWS (1929) §3724.

[13] WIS. STAT. (1933) §75.36.

[14] *Id.* §59.97.

[15] Minn. Laws 1931, c. 407, §1, p. 571.

[16] Va. Laws 1936.

[17] *Ibid.*

[18] 49 STAT. 963 (1935), 16 U. S. C. A. §567 (a).

An interesting feature of the Fulmer Act is a provision to the effect that after June 30, 1942 no additional lands shall be acquired within a state which has not prior thereto provided by law for the reversion of title to the state or political unit thereof of tax delinquent lands.[19] Moreover, prior to June 30, 1942 preference is to be given to states which provide under their tax-delinquency laws for such reversion of title.[20]

In 1933 there was created in West Virginia a Public Land Corporation in which the title to tax-delinquent lands was to be vested after the expiration of a moratorium declared until December 31, 1935.[21] At the present time, the State Auditor, in coöperation with the State Department of Conservation, is engaged in listing and classifying the lands which have been forfeited to the state and not redeemed. Although this inventory has not been completed preliminary estimates place the number of tracts, including city lots, which have reverted to the state at 125,000. The total acreage involved cannot be determined until duplications and errors have been sifted out.

The title to land reverting as of December 31, 1935 and thereafter becomes absolute and the land can therefore be administered for a public purpose. The Public Land Corporation may acquire from individuals or from the State Commissioner of forfeited lands by purchase, lease or agreement any lands that may be necessary for a public use. For the purpose of consolidating lands either under state or federal administration the corporation may sell, purchase or exchange lands or stumpage. The corporation may also negotiate loans from the United States for the purchase of lands under the Fulmer Act. It has the authority to designate lands to which it has title to such public uses as forestation, stock grazing, agricultural rehabilitation and homesteading, or it may contract or lease them for the proper development of oil, gas, mineral and water rights within or upon them.

All income received from the use of such public lands is to be used solely for the purpose of liquidating the obligations incurred for their acquisition, development and administration. Any net income derived after all indebtedness or other obligations have been discharged is to be paid into the general school fund.

PRIVATE OWNERSHIP OF LAND CARRIES RESPONSIBILITIES

For one hundred and fifty years the policy of the nation has been to encourage the transfer of land from public to private ownership. This policy unquestionably hastened the occupation and development of an ever-receding frontier. As new territory was occupied new states, new counties and new school districts were formed. Since the property tax was the main reliance of these new units of government, there was always pressure to get every acre of the public domain into private ownership and onto the tax roll. The result was that the poor land as well as the good was sold or homesteaded. Even the forest and mineral lands were sold or given away, and with almost no restrictions on their use. The results of unrestrained

[19] *Id.* §567 (b) (a).
[20] *Ibid.*
[21] W. Va. Acts 1933 (Ext. Sess.) c. 54.

exploitation have naturally been forest devastation, soil depletion or exhaustion, and the drying up or pollution of water resources.

The strict logic of the property tax would be to reduce steadily the valuation of a diminishing resource until in the case of badly eroded agricultural land or severely denuded forest land the assessed value for taxes became almost zero. This has not been done very generally because local governments have not wanted to reduce their tax rolls. It may, therefore, be argued that cut-over forest land and worn-out farm land have been over-assessed and that this explains why these kinds of property are delinquent in such volume. Their delinquency, it is claimed, is directly traceable to illegal assessment. As sheer logic the argument is unimpeachable.

But there is another point of view to be considered. The government, that is society collectively, was the first owner of the land. It alienated it to permit private exploitation and profit. Now that the resources have been exploited, frequently to the point where the destruction of the land itself is threatened, there ought to be an easy way for the government to recover the land in the interest of conservation. Purchase is preferable to confiscation through tax delinquency, but if the owner will neither protect the land nor bear the minimum tax imposed for the privilege of owning and controlling a portion of the earth's surface confiscation is justifiable.

It is not in the interest of sound land use nor fair to posterity to remit the tax on land which is yielding no present income. Neither is it in the interest of sound land use to place the tax so low that the land can be held purely for speculation, deteriorating in quality and contributing little to the nation's support. An annual tax of a few cents an acre on even the poorest land ought to be demanded for the mere privilege of ownership, and failure to pay this minimum tax ought to be sufficient justification for the state to demand the forfeiture of title.

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